AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 76 Monday,
No. 167 August 29, 2011

Pages 53631–53810

OFFICE OF THE FEDERAL REGISTER

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

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpo@custhelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 76 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

Printed on recycled paper.

Contents

Federal Register

Vol. 76, No. 167

Monday, August 29, 2011

Agriculture Department
See Forest Service
RULES
BioPreferred Program, 53631–53633

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Formative Data Collections for Informing Policy Research, 53682
Pre-Testing of Evaluation Surveys, 53682–53683

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 53670–53671

Defense Department
NOTICES
Meetings:
Defense Intelligence Agency Advisory Board, 53671–53672

Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Evaluation of the Implementation of Green Jobs and Health Care Training Grants, 53698–53699
Labor Surplus Area Classification under Executive Orders 12073 and 10582, 53699–53700

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Approvals and Promulgations of Air Quality Implementation Plans:
Delaware; Infrastructure State Implementation Plan Requirement to Address Interstate Transport for 2006 24-Hour PM2.5 NAAQS, 53638–53640
Pesticide Tolerances:
Tetraconazole, 53641–53648
Revisions to the California State Implementation Plan:
San Joaquin Valley Unified Air Pollution Control District, 53640–53641
NOTICES
Intent to Suspend Certain Pesticide Registrations, 53678–53680

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
Viking Air Limited; Type Certificate No. A–815 Formerly Held by Bombardier Inc. and de Havilland, Inc., 53633–53636
Amendments of Class E Airspace:
Gary, IN, 53636

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53680–53682

Federal Energy Regulatory Commission
NOTICES
Applications for Amendments of Licenses:
South Carolina Electric and Gas Co., 53672
Combined Filings, 53672–53677
Surrenders of Exemptions:
BMB Enterprises, Inc., 53677
Calleguas Municipal Water District (Conduit), 53678

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Ada County, ID; Recission, 53705–53706
Final Federal Agency Actions on Proposed Highway in Washington, 53706–53707

Federal Motor Carrier Safety Administration
NOTICES
Meetings:
Motor Carrier Safety Advisory Committee; Amendment, 53707
Qualification of Drivers; Exemption Applications; Diabetes Mellitus, 53707–53708
Qualification of Drivers; Exemption Applications; Vision, 53708–53712

Federal Trade Commission
RULES
Telemarketing Sales Rule Fees, 53636–53638

Federal Transit Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53712–53715

Food and Drug Administration
NOTICES
Draft Guidance for Industry; Availability:
Oversight of Clinical Investigations; A Risk-Based Approach to Monitoring, 53683–53685

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 53697–53698

Forest Service
NOTICES
Meetings:
GMUG Resource Advisory Committee, 53665

Nevada and Placer Counties Resource Advisory Committee, 53664–53666
Santa Rosa and San Jacinto Mountains National Monument Advisory Committee; California, 53695
Sierra County Resource Advisory Committee, 53663–53664

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
RULES
Immigration Benefits Business Transformation, Increment I, 53764–53806

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Section 8 Random Digit Dialing Fair Marketing Rent Surveys, 53691–53692
United States Postal Service Vacancy Data User Verification Page, 53692–53693

Interior Department
See Land Management Bureau

International Trade Administration
NOTICES
Meetings:
U.S. Travel and Tourism Advisory Board, 53666

International Trade Commission
NOTICES
Investigations:
Certain Computer Forensic Devices and Products Containing the Same, 53695–53696

Justice Department
See Foreign Claims Settlement Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Drug Threat Survey, 53696–53697
Proposed Consent Decrees Under CERCLA, 53697

Labor Department
See Employment and Training Administration
RULES
Nondisplacement of Qualified Workers under Service Contracts, 53720–53762

Land Management Bureau
NOTICES
Coal Exploration License Application, Colorado; Invitation to Participate, 53693
Environmental Impact Statements; Availability, etc.:
Proposed McCoy Solar Energy Project and Possible Land Use Plan Amendment, Riverside County, CA, 53693–53694
Filing of Plats of Survey:
Montana, 53695
Meetings:
Santa Rosa and San Jacinto Mountains National Monument Advisory Committee; California, 53695

National Archives and Records Administration
NOTICES
Records Schedules, 53700–53702

National Highway Traffic Safety Administration
RULES
Federal Motor Vehicle Safety Standards:
Occupant Crash Protection, 53648–53652
PROPOSED RULES
Federal Motor Vehicle Safety Standards:
Seat Belt Assemblies; Denial of Petition for Rulemaking, 53660–53662
NOTICES
Petitions for Decision of Inconsequential Noncompliance:
Forest River, Inc., 53715–53717

National Institute of Standards and Technology
NOTICES
Meetings:
Manufacturing Extension Partnership Advisory Board, 53666–53667

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Partner and Customer Satisfaction Surveys, 53685–53686
Meetings:
Center for Scientific Review, 53686–53689
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 53686
Interagency Autism Coordinating Committee Services Subcommittee; Workshop, 53689–53690
National Cancer Institute, 53687
National Eye Institute, 53687–53688
National Institute of Allergy and Infectious Diseases, 53688, 53691
National Institute of Biomedical Imaging and Bioengineering, 53690–53691
National Institute of Diabetes and Digestive and Kidney Diseases, 53690

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
Atlantic Shark Management Measures, 53652–53658
Fisheries of the Exclusive Economic Zone Off Alaska:
Pollock in Statistical Area 630 in the Gulf of Alaska, 53658–53659

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 53702

Patent and Trademark Office
NOTICES
Establishing a One-Year Retention Period for Patent-Related Papers That Have Been Scanned, 53667–53670

Postal Service
NOTICES
Meetings; Sunshine Act, 53702

Presidential Documents
PROCLAMATIONS
Special Observances:
Women's Equality Day (Proc. 8699), 53807–53810

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 53702

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 53702–53704

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Passport Demand Forecasting Study Phase III, 53704–53705
Culturally Significant Objects Imported for Exhibition Determinations:
Seductive Luxury and Innovation; The Furniture of Abraham and David Roentgen, 53705

Surface Transportation Board
NOTICES
Meetings:
National Grain Car Council, 53717

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See United States Mint

U.S.–China Economic and Security Review Commission
NOTICES
Meetings:
2011 Annual Report to Congress, 53717–53718

United States Mint
NOTICES
Pricing for the 2011 American Eagle Silver Proof Coin, 53717
Pricing for the 2011 American Eagle Silver Uncirculated Coin, 53717

Separate Parts In This Issue

Part II
Labor Department, 53720–53762

Part III
Homeland Security Department, 53764–53806

Part IV
Presidential Documents, 53807–53810

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

8699 53809

7 CFR

2902 53631
3201 53631
3202 53631

8 CFR

1 53764
100 53764
103 53764
204 53764
207 53764
208 53764
209 53764
211 53764
212 53764
213a 53764
214 53764
223 53764
235 53764
236 53764
238 53764
240 53764
241 53764
244 53764
245 53764
245a 53764
248 53764
264 53764
265 53764
270 53764
274a 53764
287 53764
292 53764
299 53764
301 53764
310 53764
312 53764
316 53764
319 53764
320 53764
322 53764
324 53764
325 53764
328 53764
329 53764
330 53764
332 53764
333 53764
334 53764
335 53764
336 53764
337 53764
338 53764
339 53764
340 53764
341 53764
342 53764
343 53764
343a 53764
343b 53764
343c 53764
392 53764
499 53764

14 CFR

39 53633
71 53636

16 CFR

310 53636

29 CFR

9 53720

40 CFR

52 (2 documents) 53638, 53640
180 53641

49 CFR

571 53648

Proposed Rules:

571 53660

50 CFR

635 53652
679 53658

Rules and Regulations

Federal Register
Vol. 76, No. 167
Monday, August 29, 2011

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

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

DEPARTMENT OF AGRICULTURE

7 CFR Parts 2902, 3201, and 3202

RIN 0503–AA41

BioPreferred Program

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Direct final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is taking direct final action to relocate the BioPreferred Program, established under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 81027, from chapter XXIX of title 7 of the Code of Federal Regulations (CFR) to chapter XXXII of title 7 of the CFR.

DATES: This rule is effective October 28, 2011. Submit comments on the direct final rule by September 28, 2011. If we receive any timely significant adverse comment, we will withdraw this final rule in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503–AA41. Also, please identify submittals as pertaining to the ''Redesignation of the BioPreferred Program.''

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: biopreferred@usda.gov.* Include RIN number 0503–AA41 and ''Redesignation of the BioPreferred Program'' on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024; e-mail: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Final Rule

The USDA BioPreferred Program provides for the preferred procurement of biobased products by Federal agencies as well as a voluntary labeling program for biobased products. The BioPreferred Program was established under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102, as amended by the Food, Conservation, and Energy Act of 2008 (FCEA). USDA's Office of Energy Policy and New Uses (OEPNU) began development of the regulatory framework to implement the BioPreferred Program soon after passage of FSRIA and promulgated the ''Guidelines for Designating Biobased Products for Federal Procurement'' on January 11, 2005. The Guidelines are contained in part 2902 of chapter XXIX of title 7 of the Code of Federal Regulations (CFR) and that chapter is assigned to OEPNU. In addition to the Guidelines, OEPNU completed, and added to part 2902, regulations designating 33 categories of biobased products for Federal procurement preference.

In October, 2008, the regulatory development and implementation efforts for the BioPreferred Program were transferred from OEPNU to USDA's Office of Procurement and Property Management (OPPM). Subsequent rulemaking actions completed by OPPM (including the additional designations of categories of biobased products for Federal procurement preference (part 2902) and the promulgation of the Voluntary Labeling program for biobased products (part 2904)) have continued to appear in 7 CFR chapter XXIX, even though chapter XXXII of the CFR is assigned to OPPM. This direct final rule will relocate all elements of the BioPreferred Program from chapter XXIX of the CFR to chapter XXXII, as OPPM has sole responsibility for administering the program. USDA is establishing, within chapter XXXII of the CFR, a new part 3201 and relocating all of the regulatory text relating to the Federal procurement preference from part 2902 into the newly created part 3201. In addition, USDA is establishing a new part 3202 and relocating the regulatory text relating to the Voluntary Labeling program from part 2904 into the newly created part 3202.

II. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

This rule has been reviewed under Executive Order 12866. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, because its purpose is only to transfer existing regulatory text from one chapter of the CFR to another. Therefore, this rule has not been reviewed by the Office of Management and Budget (OMB).

B. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

C. Executive Order 12988: Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

D. Executive Order 13132: Federalism

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

E. Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

F. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

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

Today's rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

H. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under the BioPreferred Program is currently approved under OMB control numbers 0503–0011 and 0503–0020.

List of Subjects in 7 CFR Parts 2902, 2904, 3201, and 3202

Biobased products, Labeling, Procurement.

For the reasons stated in the preamble, the Department of Agriculture amends chapters XXIX and XXXII of title 7 of the Code of Federal Regulations as follows:

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

■ 1. Amend title 7 CFR chapter XXXII by establishing parts 3201 and 3202 to read as follows:

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

PART 3202—VOLUNTARY LABELING PROGRAM FOR BIOBASED PRODUCTS

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 2. Transfer 7 CFR part 2902, Subpart A—General, §§ 2902.1 through 2902.9 from chapter XXIX to chapter XXXII and redesignate as 7 CFR part 3201, Subpart A—General, §§ 3201.1 through 3201.9.

■ 3. Transfer 7 CFR part 2902, Subpart B—Designated Items, §§ 2902.10 through 2902.74 from chapter XXIX to chapter XXXII and redesignate as 7 CFR part 3201, Subpart B—Designated Items, §§ 3201.10 through 3201.74.

PART 2904—VOLUNTARY LABELING PROGRAM FOR BIOBASED PRODUCTS

■ 4. Transfer 7 CFR part 2904, §§ 2904.1 through 2904.10 from chapter XXIX to chapter XXXII and redesignate as 7 CFR part 3202, §§ 3202.1 through 3202.10.

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 5. The authority citation for the newly established part 3201 reads as follows:

Authority: 7 U.S.C. 8102.

■ 6. In newly redesignated § 3201.9, revise the reference to ''§ 2902.8'' to read ''§ 3201.8''.

PART 3202—VOLUNTARY LABELING PROGRAM FOR BIOBASED PRODUCTS

■ 7. The authority citation for the newly established part 3202 reads as follows:

Authority: 7 U.S.C. 8102.

■ 8. Amend the newly redesignated part 3202 as follows:

Amend:	By removing the reference to:	And adding in its place:
§ 2904.2, definition of ''Biobased content''	part 2902	part 3201.
§ 2904.2, definition of ''BioPreferred Product''	part 2902	part 3201.
§ 2904.2, definition of ''Designated item''	part 2902	part 3201.
§ 2904.2, definition of ''Mature market product''	part 2902	part 3201.
§ 2904.4(a)	§ 2904.2	§ 3202.2.
§ 2904.4(b)(1)(i)	part 2902	part 3201.
§ 2904.4(b)(2)(ii)	part 2902	part 3201.
§ 2904.4(b)(3)(iii)	part 2902	part 3201.
§ 2904.5(a)(2)	§ 2904.2	§ 3202.2.
§ 2904.5(b)(2)(i)	§ 2904.4	§ 3202.4.
§ 2904.5(b)(2)(iii)	§ 2904.6	§ 3202.6.
§ 2904.6(c)	§ 2904.5(a)	§ 3202.5(a).
§ 2904.8(a)	§ 2904.6	§ 3202.6.
§ 2904.8(a)	§ 2904.5	§ 3202.5.
§ 2904.8(b)(2)(i)	§ 2904.7	§ 3202.7.
§ 2904.8(c)	§ 2904.6	§ 3202.6.
§ 2904.10(b)	§ 2904.8(b)(1)	§ 3202.8(b)(1).
§ 2904.10(c)	§ 2904.9	§ 3202.9.

Dated: August 17, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2011–21694 Filed 8–26–11; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0597; Directorate Identifier 2011–CE–019–AD; Amendment 39–16793; AD 2011–18–11]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate No. A–815 Formerly Held by Bombardier Inc. and de Havilland, Inc.)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Viking Air Limited (type certificate No. A–815 formerly held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 airplanes. That AD currently requires repetitively inspecting the elevator control tabs for discrepancies, taking necessary corrective actions to bring all discrepancies within acceptable tolerances, and reporting certain inspection results to the FAA. This new AD retains the actions currently required in AD 2011–05–02 and removes the Supplemental Type Certificate (STC) SA01059SE condition in the Applicability section. This AD was prompted by our determination that we inadvertently omitted certain airplanes from the Applicability section. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective October 3, 2011.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of March 31, 2011 (76 FR 10220, February 24, 2011).

ADDRESSES: For information about the revisions to the FAA-approved maintenance/inspection program identified in this AD, contact Viking Air Ltd., 9574 Hampden Road, Sidney, BC Canada V8L 5V5; telephone: (800) 663–8444; Internet: *http://www.vikingair.com.* You may review copies of the referenced revisions at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7325; fax: (516) 794–5531; email: *george.duckett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011–05–02, Amendment 39–16611 (76 FR 10220, February 24, 2011). That AD applies to the specified products. The NPRM published in the **Federal Register** on June 10, 2011 (76 FR 34011). That NPRM proposed to retain all of the requirements of AD 2011–05–02 and add airplanes to the Applicability section removing the Supplemental Type Certificate (STC) SA01059SE condition.

Comments

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

Conclusion

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

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

Interim Action

We are continuing to evaluate the cause of the unsafe condition identified in this AD to enable us to obtain better insight into the nature, cause, and extent of excessive free-play in the elevator control tabs. Based on this evaluation, we may consider further rulemaking.

Costs of Compliance

We estimate that this AD affects 65 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	Not applicable	$85 per inspection cycle	$5,525 per inspection cycle.

We estimate the following costs to do any necessary follow-on actions that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need this repair/replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Minimum repair	1 work-hour × $85 per hour = $85	$50	$135

ON-CONDITION COSTS—Continued

Action	Labor cost	Parts cost	Cost per product
Moderate repair	3 work-hours × $85 per hour = $255	150	405
Maximum repair	6 work-hours × $85 per hour = $510	450	960

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–05–02, Amendment 39–16611 (76 FR 10220, February 24, 2011), and adding the following new AD:

2011–18–11 Viking Air Limited (Type Certificate No. A–815 Formerly Held by Bombardier Inc. and de Havilland, Inc.): Amendment 39–16793; Docket No. FAA–2011–0597; Directorate Identifier 2011–CE–019–AD.

(a) Effective Date

This airworthiness directive (AD) is effective October 3, 2011.

(b) Affected ADs

This AD supersedes AD 2011–05–02, Amendment 39–16611 (76 FR 10220, February 24, 2011).

(c) Applicability

This AD applies to Viking Air Limited (type certificate No. A–815 formerly held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 airplanes, all serial numbers, that are certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD results from an evaluation of revisions to the manufacturer's maintenance manual that adds new repetitive inspections to the elevator control tabs. To require compliance with these inspections for U.S. owners and operators we are mandating these inspections through the rulemaking process. We are issuing this AD to add new repetitive inspections of the elevator control tabs. If these inspections are not done, excessive free-play in the elevator control tabs could develop. This condition could lead to loss of tab control linkage and severe elevator flutter. Such elevator flutter could lead to possible loss of control.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

Actions	Compliance	Procedures
(1) Inspect the elevator control tabs for discrepancies.	(i) *For airplanes previously affected by AD 2011–05–02* (76 FR 10220, February 24, 2011): Initially within the next 50 hours time-in-service (TIS) after March 31, 2011 (the effective date retained from AD 2011–05–02). (ii) *For airplanes not previously affected by AD 2011–05–02* (76 FR 10220, February 24, 2011): Initially within the next 50 hours time-in-service (TIS) after October 3, 2011 (the effective date of this AD). (iii) *For all affected airplanes:* Repetitively thereafter inspect at intervals not to exceed 100 hours TIS.	Following Viking DHC–3 Otter Maintenance Manual Temporary Revisions No. 18, No. 19, and No. 20, all dated December 5, 2008.
(2) If any discrepancies are found during any inspection required in paragraph (f)(1) of this AD, take necessary corrective actions to bring all discrepancies within acceptable tolerances.	*For all affected airplanes:* Before further flight after any inspection required in paragraph (f)(1) of this AD in which discrepancies are found.	Following Viking DHC–3 Otter Maintenance Manual Temporary Revisions No. 18, No. 19, and No. 20, all dated December 5, 2008.

Actions	Compliance	Procedures
(3) If, during any inspection required in paragraph (f)(1) of this AD, the total maximum free play of the elevator servo tab and trim tab relative to the elevator exceeds 1.0 degree (this is equal to a maximum displacement of 0.070″ at the trailing edge), report the results of the inspection to the FAA.	*For all affected airplanes:* Within 30 days after the inspection or within the next 10 days after October 3, 2011 (the effective date of this AD), whichever occurs later. *For airplanes previously affected by AD 2011–05–02* (76 FR 10220, February 24, 2011): We are collecting these inspection results for 24 months after March 31, 2011 (the effective date retained from AD 2011–05–02). *For airplanes not previously affected by AD 2011–05–02* (76 FR 10220, February 24, 2011): We are collecting these inspection results for 24 months after October 3, 2011 (the effective date of this AD). The reporting requirements of this AD are no longer required after that time..	Use the form (figure 1 of this AD) and submit it to FAA, Small Airplane Directorate, Attn: Jim Rutherford, 901 Locust, Room 301, Kansas City, Missouri 64106.

AD 2011–18–11

Airplane Serial Number:	
Time-in-Service (TIS) of Airplane:	
Airplane Engine Type/Model Number/Series Number:	
TIS of Airplane When Current Engine was Installed:	
Date When Current Engine was Installed:	
STC Number that Installed Current Engine (if applicable):	
Out of Tolerance Recording:	
Corrective Action Taken:	
Any Additional Information (Optional):	
Name:	
Telephone and/or Email Address:	
Date:	

Send report to: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; facsimile: (816) 329–4090; e-mail: *jim.rutherford@faa.gov.*

Figure 1

(g) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(3) AMOCs approved for AD 2011–05–02 (76 FR 10220, February 24, 2011) are approved as AMOCs for this AD.

(i) Related Information

For more information about this AD, contact George Duckett, Aerospace Engineer, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7325; fax: (516) 794–5531; email: *george.duckett@faa.gov.*

(j) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(2) Viking DHC–3 Otter Maintenance Manual Temporary Revision No. 18, Viking DHC–3 Otter Maintenance Manual Temporary Revision No. 19, and Viking DHC–3 Maintenance Manual Temporary Revision No. 20, all dated December 5, 2008, approved for IBR March 31, 2011 (76 FR 10220, February 24, 2011).

(3) To get information about the revisions to the maintenance program identified in this AD, contact Viking Air Ltd., 9574 Hampden Road, Sidney, BC Canada V8L 5V5; telephone: (800) 663–8444; Internet: *www.vikingair.com.*

(4) You may review copies of the referenced revisions at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

Issued in Kansas City, Missouri, on August 19, 2011.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–21876 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0427; Airspace Docket No. 11–AGL–7]

Amendment of Class E Airspace; Gary, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Gary, IN, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Gary/Chicago International Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport. This action also updates the airport name.

DATES: *Effective date:* 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 18, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Gary, IN, creating additional controlled airspace at Gary/Chicago International Airport (76 FR 28686) Docket No. FAA–2011–0427. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by creating additional Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Gary/Chicago International Airport, Gary, IN. This action also updates the airport name from Gary Regional Airport to Gary/Chicago International Airport, Gary, IN. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace for Gary/Chicago International Airport, Gary, IN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL IN E5 Gary, IN [Amended]

Gary/Chicago International Airport, IN
(Lat. 41°36′59″ N., long. 87°24′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Gary/Chicago International Airport, and within 2 miles each side of the 124° bearing from the airport extending from the 6.7-mile radius to 11.6 miles southeast of the airport.

Issued in Fort Worth, Texas, on August 17, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–21908 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–AA98

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the Commission or ''FTC'' is amending its Telemarketing Sales Rule (''TSR'') by updating the fees

charged to entities accessing the National Do Not Call Registry (the Registry as required by the Do-Not-Call Registry Fee Extension Act of 2007.

DATES: *Effective Date:* The revised fees will become effective October 1, 2011.

ADDRESSES: Requests for copies of this document should be sent to: Public Reference Branch, Federal Trade Commission, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Copies of this document are also available on the Internet at the Commission's Web site: *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Ami Joy Dziekan, (202) 326–2648, BCP, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Rm. H–246, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: To comply with the Do-Not-Call Registry Fee Extension Act of 2007 (Pub. L. 110–188, 122 Stat. 635) (Act), the Commission is amending the TSR by updating the fees entities are charged for accessing the Registry as follows: The revised rule increases the annual fee for access to the Registry for each area code of data from $55 to $56 per area code; increases the fee per area code of data during the second six months of an entity's annual subscription period from $27 to $28; and increases the maximum amount that will be charged to any single entity for accessing area codes of data from $15,058 to $15,503.

These increases are in accordance with the Act, which specifies that beginning after fiscal year 2009, the dollar amounts charged shall be increased by an amount equal to the amounts specified in the Act, multiplied by the percentage (if any) by which the average of the monthly consumer price index (for all urban consumers published by the Department of Labor) (''CPI'') for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12-month period ending June 30, 2008. The Act also states that any increase shall be rounded to the nearest dollar and that there shall be no increase in the dollar amounts if the change in the CPI is less than one percent. For fiscal year 2009, the Act specified that the original annual fee for access to the Registry for each area code of data was $54 per area code, or $27 per area code of data during the second six months of an entity's annual subscription period, and that the maximum amount that would be charged to any single entity for accessing area codes of data would be $14,850.

The determination whether a fee change is required and the amount of the fee change involves a two step process. First, to determine whether a fee change is required, we measure the change in the CPI from the time of the previous increase in fees. There was no change in the fees for fiscal year 2011 because last year, there was an increase in the CPI of 0.97 percent, which was under the one percent CPI change specified in the statute. Accordingly, we calculated the change in the CPI since we last changed the fee in fiscal year 2009, and the change was 3.00 percent. Because this change is over the 1 percent threshold, the fees will change for fiscal year 2012.

Second, to determine how much the fees should increase this fiscal year, we use the calculation specified by the Act set forth above, the percentage change in the baseline CPI applied to the original fees for fiscal year 2009. The average value of the CPI for July 1, 2007 to June 30, 2008 was 211.702; the average value for July 1, 2010 to June 30, 2011 was 221.087, an increase of 4.4 percent. Applying the 4.4 percent increase to the base amount from fiscal year 2009, leads to an increase from $55 to $56 in the fee from last year for access to a single area code of data for a full year for fiscal year 2012. The actual amount is $56.38, but when rounded, pursuant to the Act, the amount is $56. The fee for accessing an additional area code for a half year increases to $28.19 (rounded to $28). The maximum amount charged increases to $15,503.40 (rounded to $15,503).

Administrative Procedure Act; Regulatory Flexibility Act; Paperwork Reduction Act

The revisions to the Fee Rule are technical in nature and merely incorporate statutory changes to the TSR. These statutory changes have been adopted without change or interpretation, making public comment unnecessary. Therefore, the Commission has determined that the notice and comment requirements of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604.

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3521, the Office of Management and Budget (''OMB'') approved the information collection requirements in the Amended TSR and assigned the following existing OMB Control Number: 3084–0097. The amendments outlined in this Final Rule pertain only to the fee provision (§ 310.8) of the Amended TSR and will not establish or alter any record keeping, reporting, or third-party disclosure requirements elsewhere in the Amended TSR.

List of Subjects in 16 CFR Part 310

Advertising, Consumer protection, Reporting and recordkeeping requirements, Telephone, Trade practices.

Accordingly, the Federal Trade Commission amends part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108; 15 U.S.C. 6151–6155.

■ 2. Revise §§ 310.8(c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $56 for each area code of data accessed, up to a maximum of $15,503; *provided,* however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further,* that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in § 310.8(c), each person excepted under § 310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (''the annual period''). To obtain access to additional area codes of data during the first six months of the annual period,

each person required to pay the fee under § 310.8(c) must first pay $56 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay $28 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–21992 Filed 8–26–11; 8:45 am]

BILLING CODE 6750–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–1027; FRL–9457–2]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Infrastructure State Implementation Plan Requirement To Address Interstate Transport for the 2006 24-Hour $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware on September 16, 2009, as supplemented on April 27, 2011. The revision satisfies the Clean Air Act (CAA) infrastructure requirement that each State's plan contain adequate provisions prohibiting its emissions from contributing significantly to nonattainment in, or interfering with maintenance by, any other state with respect to the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). EPA is approving this revision in accordance with the requirements of the CAA.

DATES: *Effective Date:* This final rule is effective on September 28, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–1027. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 18, 2011 (76 FR 2853), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval, and in the alternative, proposed disapproval of Delaware's infrastructure SIP submittal intended to address significant contribution to nonattainment or interference with maintenance in another state with respect to the 2006 $PM_{2.5}$ NAAQS, as required by section 110(a)(2)(D)(i)(I) of the CAA. The formal SIP revision was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on September 16, 2009. As discussed in EPA's January 18, 2011 NPR (76 FR 2853), DNREC supplemented its September 16, 2009 submittal with a technical analysis submitted to EPA for parallel-processing on December 9, 2010. Since the time of EPA's January 18, 2011 NPR, DNREC took the supplemental technical analysis, for which it has requested parallel-processing, through the public notice and hearing procedures required for SIP revisions by section 110 of the CAA. On April 27, 2011, DNREC submitted the technical analysis to EPA as a formal supplement to its September 16, 2009 submittal. The technical analysis submitted on April 27, 2011 is exactly the same as the technical analysis for which DNREC requested parallel-processing on December 9, 2010, and which was included in the rulemaking docket (EPA–R03–OAR–2010–1027) for EPA's January 18, 2011 NPR (76 FR 2853).

This final action addresses only those portions of Delaware's September 16, 2009 submittal that address the 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment or interference with maintenance in another state with respect to the 2006 $PM_{2.5}$ NAAQS. EPA has taken separate action on certain other portions of Delaware's September 16, 2009 submittal. (See Docket ID No. EPA–R03–OAR–2010–0158.)

II. EPA's Evaluation of the SIP Revision

In the January 18, 2011 NPR (76 FR 2853), EPA proposed to approve, and in the alternative, proposed to disapprove Delaware's SIP revision to address significant contribution to nonattainment or interference with maintenance in another state with respect to the 2006 $PM_{2.5}$ NAAQS. The NPR explained that if in the course of reviewing and preparing responses to the comments submitted on the proposed ''Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone'' (75 FR 45210, August 2, 2010, also known as the Transport Rule), EPA's additional modeling and the adjustments made to its technical analyses indicate that the State of Delaware should not be subject to or covered by the final Transport Rule, EPA would take final action to approve DNREC's SIP. Alternatively, if in the course of reviewing and preparing responses to the comments submitted on the proposed Transport Rule, EPA's additional modeling and the adjustments made to its technical analyses indicate that the State of Delaware should be subject to and covered by the final Transport Rule, EPA would to take final action to disapprove Delaware's SIP revision for infrastructure element 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. The full explanation and rationale for EPA's proposed action is discussed in the NPR and will not be restated here.

On July 6, 2011, EPA promulgated the Transport Rule, now referred to as the ''Cross-State Air Pollution Rule'' (CSAPR). EPA's review of the comments submitted on the proposed Transport Rule and the additional modeling and adjustments made to the technical analyses for the final CSAPR indicate that the State of Delaware is meeting its obligations to address the requirements of CAA section 110(a)(2)(D)(i)(I). EPA has, therefore, determined that Delaware is not subject to or covered by the CSAPR. For additional information on the final CSAPR, including the technical support documents and the rationale for EPA's final determination that Delaware does not significantly contribute to any other state's ability to attain or maintain the 2006 $PM_{2.5}$ NAAQS, please see Docket ID No. EPA–HQ–OAR–2009–0491 for the Federal Implementation

Plan to Reduce Interstate Transport of Fine Particulate Matter and Ozone.

III. Final Action

EPA is approving Delaware's September 16, 2009 SIP revision as supplemented on April 27, 2011. This SIP revision satisfies the CAA infrastructure requirement that each SIP contain adequate provisions prohibiting emissions within the State from contributing significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2006 24-hour fine particulate matter ($PM_{2.5}$) NAAQS.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 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 approving Delaware's infrastructure SIP to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS may not 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, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 11, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (e) is amended by adding the entry for Infrastructure element 110(a)(2)(D)(i)(I) related to interstate transport at the end of the table to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Infrastructure element 110(a)(2)(D)(i)(I) related to interstate transport.	Statewide	9/16/09; 4/27/11	8/29/11 [Insert page number where the document begins].	

[FR Doc. 2011–21935 Filed 8–26–11; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0412; FRL–9455–3]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on June 24, 2011 and concern oxides of nitrogen (NOx) and particulate matter (PM) emissions from glass melting furnaces. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

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

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0412 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On June 24, 2011 (76 FR 37044), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4354	Glass Melting Furnaces	09/16/10	04/05/11

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

IV. Statutory and Executive Order Reviews

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

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

appropriate circuit by October 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 8, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220, is amended by adding paragraph (c)(388)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(388) * * *

(i) * * *

(B) San Joaquin Valley Air Pollution Control District.

(*1*) Rule 4354, ''Glass Melting Furnaces,'' amended on September 16, 2010.

* * * * *

[FR Doc. 2011–21940 Filed 8–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0583; FRL–8885–1]

Tetraconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tetraconazole in or on multiple commodities which are identified and discussed later in this document. In addition, EPA is removing the existing grape tolerance because grape is now covered under the newly established tolerance for small fruit vine climbing, except fuzzy kiwifruit, subgroup 13–07F. The Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 29, 2011. Objections and requests for hearings must be received on or before October 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–2010–0583. 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: Sidney Jackson, Registration Divison, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–7610; *e-mail address: jackson.sidney@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://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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–2010–0583 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 October 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–2010–0583, by one of the following methods:

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

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 8, 2010 (75 FR 54629) (FRL–8843–3) and December 15, 2010 (75 FR 78240) (FRL–8853–1), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP) 0E7735 by Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08450, and (PP) 0F7737 by Isagro S.p.A., 430 Davis Drive, Suite 240, Morrisville, NC 27560, respectively. The petitions requested that 40 CFR 180.557 be amended by establishing tolerances for residues of the fungicide tetraconazole, 1-[2-(2,4-dichlorophenyl)-3-(1,1,2,2-tetrafluoroethoxyl)propyl]-1*H*-1,2,4-triazole, in or on small fruit vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.20 parts per million (ppm); and low growing berry, subgroup 13–07G at 0.25 ppm (0E7735), and corn, field, forage; corn field, grain; corn, field, stover; corn pop, grain; and corn, pop, stover at 1.0, 0.01, 1.5, 0.01 and 1.5 ppm, respectively (0F7737). Each notice referenced a summary of the petition prepared by Isagro, USA, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notices of filing. Based upon review of all available data supporting the petitions, EPA made the following modifications:

1. Revised the tolerance expression in § 180.557(a), and corrected commodities name.

2. Revised proposed tolerance levels for corn, field, forage; corn, field, stover; and corn, pop, stover.

3. EPA is also revising established tolerance levels for milk; milk, fat; poultry, meat by-products, and fat, liver, and meat by-products of cattle, goat, horse and sheep based on the proposed tolerances and revisions to existing feed commodity tolerances.

4. EPA is removing the existing grape tolerance because grape is covered under the newly established tolerance for small fruit vine climbing, except fuzzy kiwifruit, subgroup 13–07F.

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 tetraconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with tetraconazole 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.

Tetraconazole has low acute toxicity via the oral, dermal, and inhalation routes. It is a slight eye irritant, but is not a dermal irritant or a dermal sensitizer. The liver and kidney are the primary target organs of tetraconazole in mice, rats and dogs. Toxicity in these organs occurred following 28-day, 90-day, and 1- to 2-year oral exposures.

For chronic durations, the dog was the most sensitive species, followed by the mouse, and then the rat. Chronic toxicity in the dog included increased absolute and relative kidney weights and histopathological changes in the male kidney (cortical tubular hypertrophy) which were observed at the mid-dose. At the high dose, liver effects were observed in both sexes. In the mouse, effects included increased liver weights, hepatocellular vacuolization in both sexes, and increased kidney weights in males. In rats, several effects not related to liver and kidney toxicity were observed. These included histopathological changes of the bone, pale and thickened incisors, decreased absolute and relative adrenal and pituitary weights in males, and decreased body weight (at terminal sacrifice) in females. Centrilobular hepatocyte hypertrophy was observed in the high-dose groups for both sexes in this study.

Oral rat and rabbit prenatal developmental studies showed no increased quantitative susceptibility of the fetus to tetraconazole exposure *in utero.* In the developmental toxicity study in rats, the maternal toxicity was manifested as decreased body weight gain, food consumption, increased water intake, increased liver and kidney weights. There were developmental effects in rats which suggested qualitative susceptibility. They consisted of increased incidences of supernumerary ribs, and increased incidences of hydroureter and hydronephrosis, which exceeded the high end value of the historical control range. No developmental toxicity was seen in the rabbit study. The sole maternal effect in this rabbit study was decreased body weight gain which occurred at the highest dose tested.

A 2-generation rat reproduction study also revealed no increased quantitative susceptibility in offspring. Parental toxicity resulted in increased mortality in females of the P and F_1 generations at the mid dose. This increase in mortality had a higher incidence at the highest dose tested. Effects in parental animals that survived the duration of the study were consistent with other studies in the database including decreased body-weight gain and food consumption during pre-mating, increased relative liver and kidney weights, and hepatocellular hypertrophy in males and females at the lowest-observed adverse-effect levels (LOAELs).

There were signs of neurotoxicity in the acute neurotoxicity study. There is

no evidence of neurotoxicity in any of the other studies in the toxicity database for tetraconazole. In the absence of specific immunotoxicity studies, EPA has evaluated the available tetraconazole toxicity database to determine whether an additional database uncertainty factor (UF_{DB}) is needed to account for potential immunotoxicity. No evidence of immunotoxicity was found.

There were no systemic effects observed in the 21-day dermal toxicity study up to the highest dose used. In the 28-day inhalation study in rats, toxicity was observed at the lowest concentration/dose. At the highest concentration tested, there were treatment-related increases in absolute lung weights in both sexes. There were also treatment-related increases in absolute and relative liver weights in males. In the kidney, there were treatment-related increases in absolute and relative kidney and adrenal gland weights in females. In females there was a treatment-related statistically-significant increase in circulating globulins at the mid and high concentrations. Finally in the kidney, at the highest concentration tested, there was a 50% increase in the incidence of tubular hyaline droplets with features characteristic of α-2 microglobulin. This was observed only in males, and this effect is not considered relevant to humans.

Tetraconazole did not show evidence of mutagenicity in in vitro or in vivo studies. Carcinogenicity studies with tetraconazole resulted in an increased incidence of combined benign and malignant liver tumors in mice of both sexes. In contrast to mice, no tumors were noted in male or female rats after long-term dietary administration of tetraconazole. The Agency classified tetraconazole as ''likely to be carcinogenic to humans'' by the oral route based on the occurrence of liver tumors in male and female mice.

Specific information on the studies received and the nature of the adverse effects caused by tetraconazole as well as the no-observed-adverse-effect level (NOAEL) and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in document ''Tetraconazole: Human-Health Risk Assessment for Proposed Uses of Small Fruit Vine Climbing Subgroup 13–07F, Low-Growing Berry Subgroup 13–07G, and Field Corn and Popcorn'' dated April 14, 2011 at pages 38–47 in docket ID number EPA–HQ–OPP–2010–0583–0004.

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 tetraconazole used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TETRACONAZOLE FOR USE IN DIETARY AND NON-OCCUPATIONAL 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 13–50 years of age).	NOAEL = 22.5 milligrams/kilograms/day (mg/kg/day). UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.225 mg/kg/day ..... aPAD = 0.225 mg/kg/day	Developmental toxicity study in rats Developmental LOAEL = 100 mg/kg/day based on increased incidence of small fetuses, supernumerary ribs, and hydroureter and hydronephrosis.
Acute dietary (General population including infants and children).	NOAEL = 50 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.5 mg/kg/day ..... aPAD = 0.5 mg/kg/day	Acute neurotoxicity (rat) LOAEL = 200 mg/kg/day based on decreased motor activity on day 0 in both sexes, and clinical signs in females including hunched posture, decreased defecation, and/or red or yellow material on various body surfaces.
Chronic dietary (All populations)	NOAEL= 0.73 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.0073 mg/kg/day cPAD = 0.0073 mg/kg/day	Chronic oral toxicity (dog) Developmental LOAEL = 100 mg/kg/day based on absolute and relative kidney weights and histopathological changes in the male kidney.
Cancer (Oral, dermal, inhalation) ..	Classification: ''Likely to be Carcinogenic to Humans'' and report cancer slope factor (Q_1*) of 2.3 x 10^{-2} mg/kg/day derived from the male mouse liver benign and/or malignant combined tumor rates.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). 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 tetraconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing tetraconazole tolerances in 40 CFR 180.557. EPA assessed dietary exposures from tetraconazole 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 tetraconazole. 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 Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance level residues and 100 percent crop treated (PCT) for all existing and proposed uses.

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, the chronic analysis (food and water) was refined through the incorporation of empirical processing factors, average field trial residues, average residues from the feeding studies, and PCT estimates for sugar beet, peanut, field corn and soybean.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. If quantitative cancer risk assessment is appropriate, cancer risk may be quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or non-linear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determine a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that tetraconazole should be classified as ''Likely to be Carcinogenic to Humans'' and a linear approach has been used to quantify cancer risk. The cancer analysis (food and water) was refined through the incorporation of empirical processing factors, average field trial residues, average residues from the feeding studies, and projected PCT estimates for sugar beet, field corn, peanut, and soybean.

iv. *Percent crop treated (PCT) information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT uses as follows: sugarbeet—70%; and peanut—77%.

In most cases, EPA uses available data from the United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency estimated the PCT for as follows: field corn—9% and soybean at 5%.

EPA estimates of the PCT for proposed new uses of tetraconazole represent the upper bound of use expected during the pesticide's initial 5 years of registration. Because soybean has not been registered for 5 years, the Agency has treated it as a new use for analyzing PCT. The PCT for new uses for use in the chronic dietary assessment is calculated as the average PCT of the market leader or leaders (*i.e.,* the pesticides with the greatest PCT) on that site over the three most recent years of available data. Comparisons are only made among pesticides of the same pesticide type (*e.g.,* the market leader for fungicides on the use site is selected for comparison with a new fungicide). The market leader included in the estimation may not be the same for each year since different pesticides may dominate at different times.

To evaluate whether the PCT estimate for tetraconazole could be exceeded, EPA considered whether there may be unusually high pest pressure, as indicated in emergency exemption requests for tetraconazole; the pest spectrum of the new pesticide in comparison with the market leaders and whether the market leaders are well established for that use; and whether pest resistance issues with past market leaders provide tetraconazole with significant market potential. Given currently available information, EPA concludes that it is unlikely that actual PCT for tetraconazole will exceed the estimated PCT for new uses during the next 5 years.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which tetraconazole may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for tetraconazole in drinking water.

These simulation models take into account data on the physical, chemical, and fate/transport characteristics of tetraconazole. 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 Pesticide Root Zone Model (PRZM ver. 3.12.2) and Exposure Analysis Modeling System (EXAMS ver. 2.98.04.06) and Screening Concentration in Ground Water (SCI–GROW) models, ver. 2.3, the estimated drinking water concentrations (EDWCs) of tetraconazole for acute exposures are estimated to be 10.45 parts per billion (ppb) for surface water and 0.40 ppb for ground water. Chronic exposures for non-cancer assessments are estimated to be 4.68 ppb for surface water and 0.40 ppb for ground water. Chronic exposures for cancer assessments are estimated to be 3.29 ppb for surface water and 0.40 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 10.45 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 4.68 ppb was used to assess the contribution to drinking water. For cancer dietary risk assessment, the water concentration of value 3.29 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). Tetraconazole is not registered for any specific use patterns that would result in residential exposure.

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.''

Tetraconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found; some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

Triazole-derived pesticides can form the common metabolite T and two triazole conjugates (TA and TAA). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including tetraconazole, EPA conducted a human-health risk assessment for exposure to T, TA, and TAA resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (*e.g.,* use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (*i.e.,* high-end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA SF for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov,* Docket Identification (ID) Number EPA–HQ–OPP–2005–0497, and an update to assess the addition of the commodities included in this action may be found in docket ID EPA–HQ–OPP–2010–0583 in the document titled ''Common Triazole Metabolites, Updated Aggregate Human-Health Risk Assessment to address tolerance petitions for Tetraconazole''.

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.* There are no residual uncertainties for pre- and post-natal toxicity. There is no evidence of increased quantitative susceptibility of rat or rabbit fetuses to *in utero* exposure to tetraconazole. There is evidence of increased qualitative susceptibility to fetuses in the rat prenatal developmental toxicity (increased incidences of supernumary ribs, and hydroureter and hydronephrosis). The level of concern is low however because:

i. The fetal effects were seen at the same dose as the maternal effects.

ii. A clear NOAEL was established.

iii. The developmental NOAEL from the study in rats is being used as the POD for the acute dietary endpoint (females 13–49 years of age).

iv. There were no developmental effects in the rabbit study. There is also no evidence of increased quantitative or qualitative susceptibility to offspring in the 2-generation reproduction study.

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: The toxicity database for tetraconazole is complete. The EPA has recently received an immunotoxicity study for tetraconazole. Preliminary review of the study shows no evidence of immunotoxicity and does not impact the selection of endpoints. EPA believes the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios and for evaluation of the requirements under the FQPA, and an additional safety factor does not need to be applied.

i. There were effects indicative of neurotoxicity (motor activity effects) in the acute neurotoxicity study in rats. However, the level of concern is low for the following reasons:

• A clear NOAEL was established which is being used in endpoint selection.

• Comparison of the LOAELs from the acute neurotoxicity and chronic dog studies reveal a ~70-fold difference between the effects from the two studies, with the chronic effects being the more sensitive of the two.

• Neither of the more severe endpoints indicative of neurotoxicity (changes in brain weight or histopathological changes in the brain or nerve processes) were observed in the acute neurotoxicity study. Additionally, the EPA has recently received a subchronic neurotoxicity study for tetraconazole. A preliminary review of this study shows no signs of neurotoxicity. Furthermore, neurotoxicity was not seen in any other study in the toxicity database for tetraconazole. Therefore, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

ii. There is no evidence that tetraconazole results in increased quantitative susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. There is evidence of increased qualitative susceptibility to fetuses in the rat prenatal developmental toxicity (increased incidences of supernumary ribs, and hydroureter and hydronephrosis). The level of concern is low however because:

• The fetal effects were seen at the same dose as the maternal effects.

• A clear NOAEL was established.

• The developmental NOAEL from the study in rats is being used as the POD for the acute dietary endpoint (females 13–49 years of age).

• There were no developmental effects in the rabbit study. There is also no evidence of increased quantitative or qualitative susceptibility to offspring in the 2-generation reproduction study.

iii. There are no residual uncertainties identified for pre- and post-natal toxicity in the exposure databases. Tolerance-level residues, 100% crop treated, and modeled water estimates were incorporated into the acute dietary exposure analysis. Therefore, the acute analysis is highly conservative. The chronic and cancer dietary exposure analyses utilized empirical processing factors, average field trial residues, average residues from the feeding studies, percent crop treated estimates, and modeled drinking water estimates. A critical commodity analysis for the chronic/cancer runs indicated that more than half of the exposure was derived from water. The models upon which the water estimates were based incorporate conservative (protective) assumptions with actual concentrations likely to be significantly lower. As a result, it can be concluded that the chronic/cancer risk estimates provided in this document do not underestimate the risks posed by tetraconazole.

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.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to tetraconazole will occupy 1.8% of the aPAD for children 1–2 years 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 tetraconazole from food and water will utilize 5% of the cPAD for all infants < 1 year old, the population group receiving the greatest exposure. There are no residential uses for tetraconazole.

3. *Short-term risk and intermediate-term risks.* Short-term and intermediate-term aggregate risk takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short-term and intermediate-term adverse effect was identified; however, tetraconazole is not registered for any use patterns that would result in short-term or intermediate-term residential exposure. Short-term and intermediate-term risk is assessed based on short-term and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short-term and 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 short-term and intermediate-term risk), no further assessment of short-term and intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term and intermediate-term risk for tetraconazole.

4. *Aggregate cancer risk for U.S. population.* Using the exposure assumptions described in Unit III.C.1.iii., EPA has concluded the cancer risk from food and water for all existing and proposed tetraconazole uses will result in a lifetime cancer risk of 3×10^{-6}. A critical commodity analysis for the cancer/chronic risk assessment indicated that water was the major contributor to the estimated cancer risk (63% of total exposure). The drinking water estimate incorporated into the cancer dietary assessment was based on models which make conservative (protective) assumptions to derive a concentration in ground and surface water. Actual concentrations are likely to be significantly lower. EPA generally considers cancer risks in the range of 10^{-6} or less to be negligible. The precision which can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the log scale; for example, risks falling between 3×10^{-7} and 3×10^{-6} are expressed as risks in the range of 10^{-6}. Considering the precision with which cancer hazard can be estimated, the conservativeness of low-dose linear extrapolation, and the rounding procedure described above in this unit, cancer risk should generally not be assumed to exceed the benchmark level of concern of the range of 10^{-6} until the calculated risk exceeds approximately 3×10^{-6}. This is particularly the case where some conservatism is maintained in the exposure assessment.

5. *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 tetraconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression currently established for tetraconazole plant and livestock tolerances. As part of the corn petition, Isagro submitted adequate method validation and independent laboratory validation (ILV) data which indicate that the QuEChERS multi-residue method L 00.00–115 is capable of quantifying tetraconazole residues in or on a variety of fruit, cereal grain, root, oilseed, and livestock commodities (note that mean recoveries in or on wheat straw were 50–70%). Based on these data and since the extraction

solvent employed in the QuEChERS method is similar to the extraction solvent employed in the radiovalidated enforcement methods, the Agency concludes that the QuEChERS method is adequate for enforcement of established tolerances.

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.

There are no Canadian or Codex maximum residue limits (MRLs) established for tetraconazole.

C. Revisions to Petitioned-For Tolerances

After completing review of the current tetraconazole database and utilizing the Agency's tolerance spreadsheet (*see Guidance for Setting Tolerances Based on Field Trial Data* SOP (August 2009 version)), EPA revised, added or deleted tolerances, or otherwise modified the tolerance levels proposed in the notices of filing. EPA is removing the existing grape tolerance because grape is covered under the newly established tolerance for small fruit vine climbing, except fuzzy kiwifruit, subgroup 13–07F. The Agency corrected listings of certain commodity names and replaced them with the preferred commodity terms. In addition, the Agency revised existing tolerance levels for tetraconazole residues in or on certain livestock commodities and established the following tolerances: Cattle, fat at 0.15 ppm; cattle, liver at 1.5 ppm; cattle, meat by-products, except liver at 0.15 ppm; goat, fat at 0.15 ppm; goat, liver at 1.50 ppm; goat, meat by-product, except liver at 0.15 ppm; horse, fat at 0.15 ppm; horse, liver at 1.50 ppm; horse, meat by-products, except liver at 0.15 ppm; milk at 0.03 ppm; milk, fat at 0.75 ppm; poultry, meat by-products at 0.05 ppm; sheep, fat at 0.15 ppm; sheep, liver at 1.50 ppm; and sheep, meat by-products, except liver at 0.15 ppm. Using resources defined above in this section, the Agency revised tolerance levels for livestock commodities because of increased livestock dietary exposure as a result of newly established corn tolerances and to take into account all tetraconazole residues in animal feed commodities.

Finally, the Agency is modifying the tolerance expression for tetraconazole to clarify that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of tetraconazole not specifically mentioned; and that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of tetraconazole, including its metabolites and degradates, in or on the commodities listed in the Table below under § 180.557. Compliance with the following tolerance levels is to be determined by measuring only tetraconazole (1-[2-(2,4-dichlorophenyl)-3-(1,1,2,2-tetrafluoroethoxy)propyl]-1*H*-1,2,4-triazole).

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions 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: August 18, 2011.

Lois Rossi,

Director, Registration Division, 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 180.557 is amended by:

■ i. Revising the introductory text in paragraph (a);

■ ii. Removing the commodity ''Grape'' from the table in paragraph (a);

■ iii. Revising the tolerance level for these commodities: ''Cattle, fat'' ''Cattle, liver'' ''Cattle, meat byproducts, except liver'' ''Goat, fat'' ''Goat, liver'' ''Goat, meat byproducts, except liver'' ''Horse, fat'' ''Horse, liver'' ''Horse, meat byproducts, except liver'' ''Milk'' ''Milk, fat'' ''Poultry, meat byproducts'' ''Sheep, fat'' ''Sheep, liver'' and ''Sheep, meat byproducts, except liver'' in the table in paragraph (a); and

■ iv. Alphabetically adding the following commodities: ''Corn, field, forage'' ''Corn, field, grain'' ''Corn, field, stover'' ''Corn, pop, grain'' ''Corn, pop stover'' ''Low growing berry subgroup 13–07G, except cranberry;'' and ''Small fruit vine climbing, except fuzzy kiwifruit, subgroup 13–07F'' to the table in paragraph (a) to read as follows:

§ 180.557 Tetraconazole; Tolerances for residues.

(a) *General.* Tolerances are established for residues of tetraconazole, including its metabolites and degradates, in or on the commodities listed below. Compliance with the following tolerance levels is to be determined by measuring only tetraconazole (1-[2-(2,4-dichlorophenyl)-3-(1,1,2,2-tetrafluoroethoxy)propyl]-1H-1,2,4-triazole), in or on the following commodities.

Commodity	Parts per million
* * * * *	
Cattle, fat	0.15
Cattle, liver	1.50
* * * * *	
Cattle, meat byproducts, except liver	0.15
Corn, field, forage	1.1
Corn, field, grain	0.01
Corn, field, stover	1.7
Corn, pop, grain	0.01
Corn, pop, stover	1.7
Goat, fat	0.15
Goat, liver	1.50
* * * * *	
Goat, meat byproducts, except liver	0.15
Horse, fat	0.15
Horse, liver	1.50
* * * * *	
Horse, meat byproducts, except liver	0.15
Low growing berry subgroup 13–07G, except cranberry	0.25
Milk	0.03
Milk, fat	0.75
* * * * *	
Poultry, meat byproducts	0.05
* * * * *	
Sheep, fat	0.15
Sheep, liver	1.50
* * * * *	
Sheep, meat byproducts, except liver	0.15
Small fruit vine climbing, except fuzzy kiwifruit, subgroup 13–07F	0.20
* * * * *	

* * * * *

[FR Doc. 2011–21947 Filed 8–26–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2008–0149]

RIN 2127–AK25

Federal Motor Vehicle Safety Standards: Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the Federal motor vehicle safety standard (FMVSS) on occupant crash protection to remove the sunset of a requirement that a vehicle's lap belt must be lockable, without the use of special tools, to tightly secure a child restraint system (CRS). We refer to this as the ''lockability'' requirement. Under the current standard, the lockability requirement ceases to apply to seating positions that are equipped with a child restraint anchorage system (commonly referred to as a ''LATCH'' system) on vehicles manufactured on or after September 1, 2012. Because data indicate that motorists are still using lockable belts to install CRSs even in seating positions with LATCH, there is a continuing need for the lockability requirement even in seating positions with LATCH. Thus, this final rule ensures that the lockability requirement continues in effect for all seating positions past September 1, 2012.

DATES: *Effective date:* The final rule is effective December 27, 2011. Petitions for reconsideration of the final rule must be received not later than October 13, 2011.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Ms. Carla Rush, Office of Crashworthiness Standards, Light Duty Vehicle Division (Phone: 202–366–4583; fax: 202–493–2739). For legal issues, you may call Mr. Thomas Healy, Office of the Chief Counsel (Phone: 202–366–2992; fax: 202–366–3820). You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This final rule amends FMVSS No. 208 to retain the lockability requirement, which is slated to sunset September 1, 2012. The agency is issuing this final rule because data indicate that motorists are still using vehicle belts to a large degree to attach CRSs to the vehicle seats. The NPRM preceding this final rule was published September 12, 2008 (73 FR 52939, Docket No. NHTSA–2008–0149).

I. Background

On October 13, 1993, NHTSA amended FMVSS No. 208, *Occupant Crash Protection,* to require all passenger cars, trucks, buses, and

multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (kg) (10,000 pounds (lb)) or less to have a seat belt assembly with a lockable lap belt at each forward-facing designated seating position (DSP), except the driver's position and any right-front DSP equipped with an automatic belt.[1] The means provided to lock the lap belt could not require the use of a locking clip [2] or any other device that attached to the vehicle's seat belt webbing, nor could it require the user to twist, invert, or otherwise deform the webbing. This requirement is referred to by the agency as the ''lockability'' requirement or the ''lockable belt'' requirement.

FMVSS No. 208 also requires vehicles to be equipped with an emergency locking retractor (ELR) for Type 2 (lap/shoulder) seat belt assemblies.[3] To meet the lockability and ELR requirements, vehicle manufacturers commonly use a switchable seat belt retractor (ELR/automatic locking retractor (ALR)) that can be converted from an ELR to an ALR. An ELR/ALR retractor can be converted from an ELR to an ALR by slowly pulling all of the webbing out of the retractor and then letting the retractor wind the webbing back up. In the ALR mode, the seat belt is lockable for use with CRSs.

The lockability requirement was meant to ease the installation of CRSs. However, motorists still found the installation of CRSs using a lockable seat belt to be difficult and the compatibility of a CRS with vehicle seats frequently challenging. Because of these difficulties, NHTSA published a final rule on March 5, 1999, establishing FMVSS No. 225, *Child Restraint Anchorage Systems.*[4] That final rule required motor vehicle manufacturers to install Lower Anchors and Tethers for Children (LATCH) [5] systems in their vehicles, and also amended FMVSS No. 213, *Child Restraint Systems,* to require CRS manufacturers to install components on most CRSs to allow the CRS to connect to a LATCH system on a vehicle.

When NHTSA published the final rule, the agency anticipated that all vehicles would be LATCH-equipped by September 1, 2012, ten years after the implementation date of the final rule. Because LATCH was intended to replace lockable belts as the means for installing CRSs in vehicles, the agency believed that there would be a time when lockable belts were no longer needed for LATCH-equipped seating positions. Accordingly, the final rule also amended FMVSS No. 208, to rescind the lockability requirement for each rear designated seating position equipped with LATCH. The sunset of the lockability requirement was set as September 1, 2012.

In 2005, NHTSA conducted a survey to assess consumer response to LATCH.[6] The survey sought to determine whether drivers of vehicles equipped with a LATCH system were using LATCH to secure LATCH-equipped CRSs to their vehicles, and to see if those CRSs were properly installed. The survey found that in 13 percent of the LATCH-equipped vehicles in which there was a child restraint, the restraint was placed in a seat position not equipped with lower anchors (the vehicle seat belt was used to secure the restraint to the vehicle). Among the 87 percent who placed the child restraint at a position equipped with lower anchors, only 60 percent used the lower attachments to secure the restraint to the vehicle. Of the child restraints located in a seating position equipped with an upper tether anchor, 55 percent were attached to the vehicle using the upper tether. Sixty-one (61) percent of upper tether nonusers and 55 percent of lower attachment nonusers cited their lack of knowledge—not knowing what the anchorages were, that they were available in the vehicle, the importance of using them, or how to use them properly—as the reason for not using them. While the LATCH survey found that consumers who have experience with LATCH like the system and that LATCH is helping to reduce the insecure installation of child restraints, the report also indicated that proper use of LATCH is not inherently evident to parents. Many parents do not use LATCH; they may not know about it or understand its importance, or may have difficulties using it.

In response to the survey's findings, NHTSA held a public meeting February 8, 2007, to discuss the effectiveness of the LATCH system, posing questions to vehicle manufacturers, CRS manufacturers, and public interest groups about improvements to the LATCH system and educating the public about LATCH.[7] Among the issues raised at the meeting was whether the lockability requirement should be retained, given the results of the survey.

On January 22, 2007, SafetyBeltSafe U.S.A. (SafetyBeltSafe) and Safe Ride News petitioned the agency to remove the sunset clause for the lockability requirement in FMVSS No. 208. The petitioners believed that the agency should retain the lockable belt requirement for LATCH-equipped DSPs because many parents and caregivers still rely on lockable belts to keep their children safely secured while riding in a vehicle. In response to the petition and the comments received at the public meeting, NHTSA published an NPRM on September 12, 2008, proposing to remove the sunset on the belt lockability requirement for LATCH-equipped DSPs.[8]

II. Public Comments on NPRM

NHTSA received 154 comments in response to the NPRM. All of the comments received by the agency expressed support for the agency's proposal in the NPRM to retain the lockability requirement. The agency received comments from motor vehicle manufacturers, insurance groups, CRS manufacturers, child advocacy groups, highway and traffic consumer organizations, child passenger safety (CPS) technicians, physicians, health and medical organizations, emergency responders and private individuals.[9]

[1] 58 FR 52922, (Oct. 13, 1993).

[2] A locking clip is a flat H-shaped metal clip intended to fasten together belt webbing (lap and shoulder portion) at a sliding latch plate, to prevent the webbing from sliding through.

[3] An ELR is a seat belt retractor that locks only in response to the rapid deceleration of the vehicle or rapid spooling out of the seat belt webbing from the retractor, and increases the comfort of the seat belt assembly as compared to an automatic locking retractor (ALR). An ALR is a seat belt retractor that locks when the continuous motion of spooling the belt out is stopped. From that point, the seat belt cannot be pulled out further without first letting the belt fully retract into the retractor housing.

[4] 64 FR 10786, (Mar. 5, 1999).

[5] The term LATCH was developed by child restraint manufacturers and retailers to refer to the standardized child restraint anchorage system required to be installed in vehicles by FMVSS No. 225. The LATCH system is comprised of two lower anchorages and one top tether anchorage. Each lower anchorage includes a rigid round rod or bar onto which the connector of a child restraint system can be attached. The bars are located at the intersection of the vehicle seat cushion and seat back. The top tether anchorage is a fixture to which the tether of a child restraint system can be hooked. FMVSS No. 225 required the 3-point LATCH system at two rear seating positions, and a top tether anchorage at a third rear seating position when a third rear seating position is provided in the vehicle.

[6] Decina, L.E., Lococo, K.H., and Doyle, C.T., *Child Restraint Use Survey: LATCH Use and Misuse.* NHTSA Publication No. DOT HS 810 679, National Highway Traffic Safety Administration, Washington, 2006. *http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Communication%20&%20Consumer%20Information/Articles/Associated%20Files/LATCH_Report_12-2006.pdf.*

[7] Notice of public meeting, request for comments, 72 FR 3103, (Jan. 24, 2007). A transcript of the public meeting is available at *http://www.regulations.gov,* Docket No. NHTSA–2007–2683.

[8] 73 FR 52939, (Sept. 12, 2008), supra.

[9] Groups that submitted comments included General Motors Corporation (GM), the Association of International Automobile Manufacturers, Inc. (AIAM), the American Automobile Association (AAA), the Insurance Institute for Highway Safety

Continued

In expressing support for the agency's proposal, the commenters raised many similar arguments for retaining the lockability requirement in FMVSS No. 208. Many of the commenters submitted comments derived from the same template. Commenters believed that the agency should retain the lockability requirement because some motorists prefer to use belts to attach CRSs, or must use belts instead of LATCH for a variety of reasons, including those raised by petitioners SafetyBeltSafe and Safe Ride News in support of retaining the lockability requirement. See NPRM, 73 FR at 52940.

III. Agency Decision

After reviewing the comments, NHTSA has concluded that a safety need exists to retain the lockability requirement in FMVSS No. 208, to facilitate the ease-of-use of seat belts in attaching CRSs to vehicles. The agency is adopting this final rule for the reasons stated in the NPRM. Specifically, the agency's LATCH survey (Decina, L.E., Lococo, K.H., and Doyle, C.T., *Child Restraint Use Survey: LATCH Use and Misuse,* supra) indicates that many motorists are continuing to use the vehicle's belt system to install child restraints, even when attaching a LATCH-equipped child restraint to a LATCH-equipped vehicle seat.

NHTSA's observational survey of the use, misuse, and consumer reaction to LATCH found that drivers who preferred installing a CRS with seat belt as opposed to LATCH indicated that they knew what to do with the seat belt. These drivers who preferred to install CRSs with seat belts also suggested it was easier and quicker to use the seat belt, and without the seat belt they could not get the CRS installed tight enough. While a majority of those surveyed in the NHTSA observational study preferred to install CRSs using LATCH, some parents and caregivers continued to demonstrate a preference for lockable belts. We are also concerned that, having become accustomed to the availability and use of lockable belts, some may continue to use seat belts to install CRSs even if they could not lock the belt and even when LATCH is available at the seating position. We believe that the continued availability of lockable belts provides parents and caregivers the flexibility needed to ensure that everyone can readily and safely install a CRS in their vehicle, whether they choose to use LATCH or the belts.

Many commenters elaborated on reasons some motorists choose to use the seat belts instead of LATCH to attach CRSs.[10]

Many commenters noted that LATCH anchors in some vehicles can be difficult to access, which can complicate installation of CRSs. We recognize there continue to be challenges in fitting some CRSs in a particular vehicle, notwithstanding improvements LATCH has made to vehicle-CRS compatibility. Accordingly, NHTSA has developed a new Vehicle-CRS fit program through the New Car Assessment Program that will provide caregivers with information about which CRSs fit their vehicles best. We anticipate this program will further minimize incompatibility issues and improve consumers' familiarity and comfort with installing CRSs using LATCH over time.[11] We are also undertaking a program to assess whether some improvements to LATCH are needed.[12] At the same time, we believe that retaining the lockable belt requirement in FMVSS No. 208 is also needed to facilitate an easy installation of a CRS in a vehicle when the belts are used, and a secure fit of the CRS to the vehicle seat.

Some commenters indicated that some consumers use the belts because they do not have a choice in using LATCH. Some commenters noted that since the time that LATCH was adopted, CRSs have evolved so that more and more of them are designed to accommodate heavier children. Several CRS manufacturers now offer harnessed-CRSs for children with weights above 40 lb. The harnessed-CRSs must be attached to the vehicle seat by some means. Yet, many vehicle manufacturers have specified a maximum load of 40 lb to 48 lb for the LATCH anchors in their vehicles. Commenters requested that the agency retain the belt lockability requirement, despite the existence of LATCH, to accommodate children weighing more than the manufacturer-recommended weight limit for LATCH anchors of vehicles in which they ride. When the child's weight bypasses the weight limit, the caregiver will have to detach the CRS from the LATCH anchors and re-attach the CRS using the seat belt. In that event, it would facilitate the installation if the belt were lockable. Similarly, some commenters pointed out that retaining the lockability requirement provides flexibility to caregivers in deciding where car beds and harnesses could be installed. These CRSs are not required by FMVSS No. 213 to have LATCH attachments.

The agency acknowledges that caregivers need to use seat belts to install the above CRSs. Retaining the lockability requirement will provide caregivers the greatest flexibility to choose a DSP where they could achieve an easy and secure installation.

Conclusion

The agency has decided to retain the belt lockability requirement for LATCH-equipped DSPs and is rescinding the belt lockability sunset in this final rule. We believe that retaining the lockable belt requirement in FMVSS No. 208 will help caregivers to properly and securely install CRSs in vehicles.

Rulemaking Analyses and Notices

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the DOT's regulatory policies and procedures. This final rule was not reviewed by the Office of Management and Budget (OMB) under E.O. 12866, ''Regulatory Planning and Review.'' It is not considered to be significant under E.O. 12866 or the Department's regulatory policies and procedures. The agency is seeking to ensure that lap belts continue to be lockable in vehicles manufactured on or after September 1, 2012. The rulemaking would not affect current costs of manufacturing lap belt systems. The minimal impacts of today's amendment do not warrant preparation of a regulatory evaluation.

(IIHS), the Juvenile Products Manufacturers Association, Inc. (JPMA), Dorel Juvenile Group (DJG), several Safe Kids Worldwide coalitions, SafetyBeltSafe U.S.A., Safe Ride News Publications, the Car Seat Lady, the New York Governor's Traffic Safety Committee, Illinois Traffic Safety Leaders, the Vermont Governor's Highway Safety Program, Advocates for Highway and Auto Safety (Advocates), the Utah Highway Safety Office, Traffic Safety Projects (TSP), University of North Carolina Highway Safety Research Center (HSRC), Crash Survivors Network, the American Association for Justice (AAJ), and the Texas Agri-Life Extension-Texas A&M System.

[10] Some elaborated on reasons for supporting lockability that were unrelated to the use of the belts to attach CRSs. Some commenters stated that lockable lap belts are used to prevent children in a booster seat or children with behavioral problems or special needs, who cannot sit still, from manipulating the seat belt. Some noted that locking the belts adjacent to a restrained child passenger prevents children from playing with the belt and wrapping it around their neck. With regard to the latter point, we note that NHTSA recommends that if a child has an unused seat belt within reach, the caregiver should buckle unused seat belt and lock the seat belt using the lockability feature. *http://www.nhtsa.gov/Driving+Safety/Child+Safety/Keeping+Kids+Safe+-+Seat+Belt+Entanglement.*

[11] 76 FR 10637, (Feb. 25, 2011).

[12] See NHTSA 2011–2013 Rulemaking and Research Priority Plan, p. 16, *http://www.nhtsa.gov/staticfiles/rulemaking/pdf/2011-2013_Vehicle_Safety-Fuel_Economy_Rulemaking-Research_Priority_Plan.pdf.*

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 60l *et seq.,* NHTSA has evaluated the effects of this action on small entities. I hereby certify that this rule would not have a significant impact on a substantial number of small entities. The final rule would affect motor vehicle manufacturers, multistage manufacturers and alterers, but the entities that qualify as small businesses would not be significantly affected by this rulemaking because they are already required to comply with the lockability requirements and have been since 1995. This final rule removes the sunset of the requirement to ensure that lap belts continue to be lockable in vehicles manufactured on or after September 1, 2012. The rulemaking would not affect current costs of manufacturing lap belt systems.

C. Executive Order 13132

NHTSA has examined today's rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision set forth above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e) Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of today's rule and finds that this rule, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.[13]

D. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

E. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule would not establish any new information collection requirements.

F. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' There are no voluntary consensus standards pertaining to the lockability requirements addressed today.

G. Civil Justice Reform

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this final rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue

[13] We note that AAJ submitted a comment to the September 12, 2008 NPRM questioning the agency's inclusion of a discussion of the preemptive effect of the rule in the preamble of the NPRM. A June 14, 2010 final rule on FMVSS No. 305, *Electric-powered vehicles: electrolyte spillage and electrical shock protection,* has previously responded to AAJ's concerns about the agency's discussion of the preemptive effect of safety standards. See, 75 FR 33515, at 33524–33525 (Jun. 12, 2010). That discussion and this discussion here should fully respond to AAJ's concerns.

other administrative proceeding before they may file suit in court.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This final rule would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

J. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by; revising the introductory paragraph of S7.1.1.5 and removing S7.1.1.5(d).

The revision reads as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S7.1.1.5 Passenger cars, and trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 1995 shall meet the requirements of S7.1.1.5(a), S7.1.1.5(b) and S7.1.1.5(c).

* * * * *

Issued on: August 22, 2011.

David L. Strickland,

Administrator.

[FR Doc. 2011–21946 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110120049–1485–02]

RIN 0648–BA69

Atlantic Highly Migratory Species; Atlantic Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS hereby implements the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 10–07 and 10–08, which prohibit the retention, transshipping, landing, storing, or selling of hammerhead sharks in the family *Sphyrnidae* (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with ICCAT fisheries. This rule affects the commercial HMS pelagic longline (PLL) fishery and recreational fisheries for tunas, swordfish, and billfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective September 28, 2011.

ADDRESSES: Supporting documents, including the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (EA/RIR/FRFA), are available from Peter Cooper, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East West Highway, Silver Spring, MD 20832. These documents and others, such as the Fishery Management Plans described below, also may be downloaded from the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/.*

FOR FURTHER INFORMATION CONTACT: Peter Cooper, Michael Clark, or Karyl Brewster-Geisz by phone: 301–427–8503 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The U.S. Atlantic tuna and tuna-like species fisheries are managed under the dual authority of the Magnuson-Stevens Act, and ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate such regulations as necessary and appropriate to carry out ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries (AA), NOAA.

On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, that implemented the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). This FMP consolidated management of all Atlantic HMS (*i.e.,* sharks, swordfish, tunas, and billfish) into one comprehensive FMP. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

ICCAT is responsible for the conservation of tuna and tuna-like

species in the Atlantic Ocean and adjacent seas. ICCAT recommendations are binding on Contracting Parties, unless Parties object pursuant to the treaty. All ICCAT recommendations are available on the ICCAT Web site at *http://www.iccat.int/en/.*

Two shark measures adopted at the 17th Annual Meeting of ICCAT in November of 2010 are the subject of this rulemaking. Recommendation 10–07, ''Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the ICCAT Convention Area,'' prohibits the retention, transshipping, landing, storing, or selling of oceanic whitetip sharks (*Carcharhinus longimanus*). The recommendation cites the fact that oceanic whitetip sharks are one of five species with the highest degree of ecological risk based on an ICCAT risk assessment, their high at-vessel survival rates and ease of identification, and the high proportion of juvenile fish that are caught as justification for adopting the recommendation.

Recommendation 10–08 ''Hammerhead Sharks (Family *Sphyrnidae*) Caught in Association with Fisheries Managed by ICCAT,'' prohibits the retention, transshipping, landing, storing, or selling of hammerhead sharks in the family *Sphyrnidae,* except for bonnethead sharks (*Sphyrna tiburo*), taken in the Convention area in association with ICCAT fisheries. The recommendation cites sustainability concerns for scalloped and smooth hammerhead sharks, difficulty in identifying the three species (scalloped, smooth, and great) without bringing them onboard, and issues with ICCAT Contracting Parties' obligations to report Task I and Task II data as reasons for adopting the recommendation.

On April 29, 2011, NMFS published a proposed rule (76 FR 23935) that considered changes to the HMS regulations at 50 CFR part 635 to carry out the ICCAT recommendations. Specifically, NMFS proposed regulatory changes that would affect HMS vessels that catch sharks in association with tuna and tuna-like species, including commercial vessels that deploy PLL gear and recreational vessels (*i.e.,* vessels issued HMS General category permits that are participating in registered HMS tournaments, vessels issued HMS Angling permits, and vessels issued HMS Charter/Headboat permits) that are fishing for and retain swordfish, tuna or billfish. NMFS did not propose to prohibit retention in all HMS recreational fisheries because there is a recreational fishery targeting sharks that is not associated with ICCAT fisheries. NMFS did not propose to prohibit the retention of oceanic whitetip and hammerhead sharks from bottom longline, gillnet, or commercial handgear because, while these gears target sharks, they are not used in association with ICCAT fisheries.

NMFS prepared a final Environmental Assessment (EA), Regulatory Impact Review (RIR), and a Final Regulatory Flexibility Analysis (FRFA), which present and analyze anticipated environmental, social, and economic impacts of each alternative contained in this final rule. The complete list of alternatives and related analyses is provided in the final EA/RIR/FRFA and in the proposed rule, and is not repeated here. A copy of the final EA/RIR/FRFA prepared for this rulemaking is available from NMFS (see **ADDRESSES**).

In this final action, NMFS will prohibit the retention of oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks on Atlantic HMS commercially-permitted vessels that have PLL gear on board, and by recreational fishermen fishing with a General Category permit participating in an HMS tournament or those fishing under an HMS Angling or Charter/Headboat permit when tuna or tuna-like species are also retained. An analysis of the 2005 through 2009 HMS logbook data covering the HMS PLL fishery indicates that, on average, a total of 50 oceanic whitetip sharks and 181 hammerhead sharks were kept per year by fishermen using PLL gear. Prohibiting retention is estimated to result in an additional 39 oceanic whitetip and 100 hammerhead sharks released alive annually, and an annual cost of $9,155 to the PLL fleet. Prohibiting retention may also have positive effects on the scalloped hammerhead stock, which was determined to be overfished with overfishing occurring by NMFS on April 28, 2011 (76 FR 23794). Recreational survey data showed that retention of an oceanic whitetip or hammerhead shark along with a tuna, billfish, or swordfish is a rare event; therefore, recreational ecologic and economic impacts of this action are estimated to be minor.

Comments and Responses

NMFS received more than 22,000 written public comments on the proposed rule. Most of these comments came from two separate campaigns. There were about 20 distinct written comments on the proposed rule. Other oral comments were collected from participants at three public hearings (Manteo, NC; Fort Pierce, FL; and Silver Spring, MD). Below, NMFS summarizes and responds to all comments made specifically on the proposed rule.

Comment 1: Retention of oceanic whitetip and hammerhead sharks should be prohibited in all HMS fisheries (commercial and recreational), and these species should be added to the prohibited species list.

Response: The main objective of this rulemaking is to implement ICCAT recommendations 10–07 and 10–08. These recommendations prohibit the retention of oceanic whitetip and hammerhead sharks caught in association with ICCAT fisheries. The United States is obligated to implement these recommendations, through regulations, consistent with the Atlantic Tunas Convention Act. Expanding the prohibition to all non-ICCAT managed HMS fisheries (commercial and recreational) is not consistent with the recommendations.

Comment 2: NMFS should not create regulatory discards of dead sharks for one gear type, especially when these sharks could be landed by fishermen using other types of gear. Allowing retention of oceanic whitetip and hammerhead sharks in other fisheries will prevent the ability to enforce this rule on a market level.

Response: The ICCAT recommendations implemented in this rulemaking specifically address retention in fisheries for tuna and tuna-like species. Management of these species in the ICCAT convention area is the primary goal of ICCAT. Thus, consistent with those recommendations, this rule prohibits retention of oceanic whitetip and hammerhead sharks in the PLL fishery and on recreational (HMS Angling and Charter headboat permit holders) vessels that possess tuna, swordfish, or billfish. Participants targeting tuna and tuna-like species are the affected universe for the recommendations.

Regulatory discards may occur by prohibiting landings of these sharks in association with ICCAT fisheries, and may result in minor, negative economic impacts. However, there may be minor, beneficial ecological impacts from fishermen having to release these sharks through the increased number of sharks that are released alive as a result of the prohibition. Survival rates vary between oceanic whitetip and hammerhead sharks, and can be affected by a variety of factors. Based on logbook data and observed survival rates, it is estimated that an additional 39 oceanic whitetip and 101 hammerhead sharks would be released alive per year by prohibiting retention of these species in ICCAT fisheries. Relative negative economic impacts of having to discard sharks (alive or dead) are anticipated; however, anecdotal evidence indicates that PLL

vessels targeting swordfish or tunas typically do not choose to use ice and limited hold space to keep sharks. Furthermore, a higher price can often be attained for tunas and swordfish, making them the better use of that limited space. Logbook data indicate that under existing regulations, between 2005 and 2009, 87 percent of hammerheads and 75 percent of oceanic whitetips caught on PLL were discarded. However, the specific reason for discarding these sharks is unclear. Depending on the type of commercial shark permit (incidental or directed), it is possible that vessel operators are required to discard hammerhead sharks because an incidental permit limits a vessel to 3 large coastal sharks per trip and a directed permit allows up to 33 large coastal sharks per trip. In the case of oceanic whitetip sharks, an incidental permit holder can possess up to 16 small coastal and pelagic sharks per trip and a directed permit holder can keep an unlimited amount of oceanic whitetips per trip (no retention limit). Given the small number of oceanic whitetip and hammerhead sharks retained by the PLL fleet annually (50 and 181, respectively), it is also possible these species are discarded because the fishermen would prefer to fill their hold with more profitable species.

In terms of enforcing the new regulations, commercial vessels with PLL gear onboard would not be authorized to possess oceanic whitetip or hammerhead sharks. Vessel operators would be responsible for complying with all relevant HMS regulations and, if found to be in violation of these regulations, could face enforcement action, including the imposition of penalties. Dealers would still be able to purchase oceanic whitetip and hammerhead sharks from commercial permit holders that are using authorized gears other than PLL. Dealers are currently, and would continue to be, responsible for ensuring that they are purchasing oceanic whitetip and hammerhead sharks or shark products from vessels that are authorized to land them.

Comment 3: ICCAT should conduct a stock assessment for the shark species that are subject to these recommendations.

Response: The Standing Committee on Research and Statistics (SCRS) at ICCAT is responsible for conducting all ICCAT stock assessments and biological reviews for species included in the convention area, and is authorized to study species other than tunas and tuna-like species as under Article IV of the ICCAT Convention. The ICCAT plenary determines the schedule for stock assessments conducted by ICCAT. ICCAT has not conducted stock assessments of hammerhead and oceanic whitetip sharks.

NMFS recently made the determination that scalloped hammerhead sharks are overfished and experiencing overfishing (76 FR 23794) based on a stock assessment published in the North American Journal of Fisheries Management (Hayes *et al.,* 2009). Based on this stock status determination, NMFS will be initiating an amendment to the 2006 Consolidated HMS FMP in order to implement regulations to end overfishing and rebuild the scalloped hammerhead shark stock as mandated under the Magnuson-Stevens Act. Implementation of the ICCAT hammerhead recommendation could help to reduce mortality of scalloped hammerhead and contribute to the rebuilding of this species.

There have been no formal NMFS or peer-reviewed stock assessments for Atlantic oceanic whitetip sharks that have been determined to be appropriate for management action under the Magnuson-Stevens Act. Given the declining abundance of oceanic whitetip sharks globally and the unknown status of the stock, the implementation of the ICCAT oceanic whitetip recommendation could benefit the status of this stock by reducing mortality in the Atlantic Ocean.

Comment 4: The ICCAT recommendation for oceanic whitetip sharks states that it applies to ''any fishery,'' therefore NMFS has an obligation to prohibit retention of this species in all U.S. Atlantic fisheries.

Response: NMFS has interpreted this recommendation as applying only to oceanic whitetip sharks caught in association with ICCAT fisheries. Therefore, the ICCAT recommendation to prohibit the retention of oceanic whitetip sharks will be applied only to U.S. ICCAT fisheries, which are considered to be fisheries that target tuna and tuna-like species. Other Contracting Parties to ICCAT have also expressed concern about the adopted wording of the recommendation and how a broader interpretation could lead to conflicts of competence with respect to other regional fisheries management organizations and arrangement in the Atlantic Ocean.

Comment 5: Recreational vessels should not be allowed to keep hammerhead sharks.

Response: Hammerhead sharks are managed domestically by the NMFS Atlantic Highly Migratory Species Management Division within the large coastal shark (LCS) complex. As such, they can be landed by any recreational permit holder using authorized gear subject to bag limits and minimum size restrictions. Currently, the LCS bag limits for recreational permit holders are one LCS, greater than 54'' fork length, per vessel, per trip. In order to remain in compliance with ICCAT shark recommendations, NMFS is prohibiting the retention of hammerhead sharks in association with tuna and tuna-like species. Therefore, recreational vessels that retain tuna, swordfish, or billfish will not be able to retain hammerhead sharks on the same trip. Recreational fishermen will still be able to retain hammerhead sharks when fishing outside of ICCAT managed fisheries.

NMFS recently made the determination that scalloped hammerhead sharks are overfished and experiencing overfishing (76 FR 23794). Based on this determination, NMFS will be initiating an amendment to the 2006 Consolidated HMS FMP in order to implement regulations to end overfishing and rebuild the scalloped hammerhead shark stock as mandated under the Magnuson-Stevens Act. Additional measures that may affect recreational vessels landing hammerhead sharks might be considered in that rulemaking.

Comment 6: I support the status quo because the other alternatives require some fishermen to throw back a dead fish that can still be retained by others.

Response: Logbook data indicate that under existing regulations, between 2005 and 2009, 87 percent of hammerhead sharks and 75 percent of oceanic whitetip sharks caught on PLL gear were discarded. Of the hammerhead sharks discarded on an annual basis over that time series, an average of 780 were released alive and were 350 discarded dead. For oceanic whitetip sharks discarded over the time series, an average of 133 were released alive and 14 were discarded dead on an annual basis. Implementation of this final rule ensures compliance with ICCAT recommendations 10–07 and 10–08. NMFS does not have estimates of at-vessel mortality of oceanic whitetip and hammerhead sharks by recreational vessels, but believes that it is low. Because of this, and because of the fact that landing an oceanic whitetip or hammerhead shark along with a tuna, swordfish, and/or billfish in recreational fisheries is a rare-event occurrence, increases in discards due to prohibiting the recreational retention of oceanic whitetip and hammerhead sharks in ICCAT fisheries are anticipated to be minimal.

Comment 7: One commenter opposed using ICCAT as a vehicle for

management of all sharks, especially large coastal sharks, until there is firm progress from other countries actively participating in pelagic shark conservation.

Response: ATCA requires NMFS to implement recommendations adopted at ICCAT regardless of progress from other countries actively participating in pelagic shark conservation. Contracting Parties are required to implement all measures adopted by the commission in their waters. Issues concerning Contracting Parties' non-compliance with ICCAT recommendations are addressed in the compliance committee.

Comment 8: Does NMFS have any data to prove that all ''kept'' sharks were alive when boated and subsequently killed for retention? If 197 oceanic whitetips are expected to be caught and the observed rate of live releases is 77 percent, then the remaining 23 percent calculates to 45 sharks (basically, the average number of retained per year). It would be less wasteful for NMFS to require the retention of dead oceanic whitetip sharks. NMFS states that approximately 55 percent of the hammerhead catch is alive when brought to the boat. Of the estimated 1,311 sharks caught annually, approximately 590 will be released dead. What benefit will that be to the stock?

Response: NMFS does not have data to prove that all individual kept sharks are alive when boated. On observed trips, a fisheries observer collects data on individual fish, including whether the fish are dead or alive when they are brought on the vessel and their disposition (*e.g.,* landed, discarded alive, discarded dead). On trips without an observer onboard, the primary source of information on species disposition is the logbook completed by the vessel operator. The logbook does not indicate whether the fish are alive or dead when they are brought on the vessel. According to observer data, approximately 55 percent and 77 percent of oceanic whitetip and hammerheads, respectively, are alive when they reach the vessel. Requiring vessel operators to retain oceanic whitetip and hammerhead sharks would not comply with Recommendations 10–07 and 10–08, which prohibit retention of these species.

To clarify, the numbers in the comment apply survival rates that are based on observed trips to logbook data. Based solely on logbook data, which provide the number of sharks landed, discarded dead and released alive, the Agency estimates that by prohibiting the retention of these species on vessels with PLL gear onboard, 172 oceanic whitetip sharks and 961 hammerhead sharks would likely be released alive. Twenty-five oceanic whitetip and 350 hammerheads would likely be released dead.

Comment 9: Without a method for dealers to verify what kind of gear a vessel is using and if tunas, swordfish, or billfish were simultaneously aboard the vessel, they will have difficulty adhering to the restriction for purchase. NMFS should delete the restriction on purchase until they have a clear way for shark buyers to verify this information or until NMFS makes it illegal for any fishermen, no matter what gear, to possess and sell these species.

Response: Federally-permitted HMS dealers are prohibited from buying product that was harvested illegally. The issues raised in the comment would likely apply to hammerhead sharks as other gears (BLL and gillnet) are the primary gears for targeting these fish. Oceanic whitetip are caught almost exclusively on PLL gear as bycatch by vessels targeting swordfish and tunas. At the point of landing, dealers would be responsible for determining whether the vessel was authorized to harvest oceanic whitetip which would depend, in part, on the type of gear onboard the vessel. If a vessel has a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks on board, then it has PLL gear as defined by the regulations and therefore may not retain, possess or land an oceanic whitetip or hammerhead shark. If the vessel is not considered to have PLL gear onboard, then it is authorized to possess oceanic whitetip and hammerhead sharks. In addition, pelagic longline vessels fishing in areas closed to BLL gear may not possess demersal species in a quantity that exceeds 5 percent of the total weight of all indicator species (demersal and pelagic) on board the vessel (§ 635.21(c)(1)). Prohibiting retention of hammerhead and oceanic whitetip sharks in all fisheries would go beyond the scope of the ICCAT recommendation; therefore, dealers, who are first receivers of oceanic whitetip and/or hammerhead sharks, will have to determine if the vessel selling the shark has PLL gear onboard in order to comply with the regulations.

Comment 10: NMFS should go beyond ICCAT and prohibit retention in all HMS recreational fisheries. We further recommend that you prohibit retention of these species, especially scalloped hammerhead sharks (*Sphyrna lewini*), not only on vessels with pelagic longline gear on board, but on those with bottom longline, gillnet, and handgear as well. More proactive measures are justified by recent science showing severe declines in scalloped hammerhead populations in particular. In a recent notice published in the **Federal Register,** NMFS declared scalloped hammerhead sharks overfished with overfishing occurring, based in part on estimates that the stock is only 17 percent of virgin stock size.

Response: At this time, NMFS is implementing the Recommendations as adopted at the 2010 ICCAT meeting. These Recommendations apply specifically to prohibiting retention of oceanic whitetip and hammerhead sharks caught in association with ICCAT fisheries. NMFS recently made the determination that scalloped hammerhead sharks are overfished and experiencing overfishing. Based on this stock status determination, NMFS will be initiating an amendment to the 2006 Consolidated HMS FMP in order to implement regulations within 2 years to end overfishing and rebuild the scalloped hammerhead shark stock as mandated under the Magnuson-Stevens Act. Implementation of the ICCAT hammerhead shark recommendation could help to reduce mortality of scalloped hammerhead and contribute to the rebuilding of this species; however, additional measures may be required in the forthcoming FMP amendment.

Comment 11: NMFS should go with the status quo alternative. Recreational fishermen should be able to keep hammerheads, which would allow people who do not live in coastal areas a once-in-a-lifetime experience to get the fish mounted.

Response: NMFS is required to implement ICCAT recommendations 10–07 and 10–08, which would prohibit retention of oceanic whitetip and hammerhead sharks caught in association with ICCAT fisheries. Recreational anglers (HMS Angling and Charter Headboat permit holders) would still be allowed to fish for and land one oceanic whitetip or hammerhead shark greater than 54″ fork length per vessel per trip consistent with existing regulations, but provided that the vessel does not also possess a swordfish, billfish, or tuna.

Comment 12: I interpret the stock assessment as saying that hammerhead sharks are rebuilding. They have a 58 percent chance of rebuilding in 10 years if we do nothing. Recent declines in landings have provided an opportunity for populations of scalloped hammerhead sharks to rebuild.

Response: In October 2009, Hayes *et al.* (2009) published in the North American Journal of Fisheries

Management a stock assessment of the Atlantic population of scalloped hammerhead sharks in U.S. waters. Based on this paper, in 2005 the population was estimated to be at 45 percent of the biomass that would produce the maximum sustainable yield (MSY), and fishing mortality was estimated to be 129 percent of fishing mortality associated with MSY. The stock is estimated to be depleted by approximately 83 percent of virgin stock size (*i.e.,* the current population is only 17 percent of the virgin stock size). In addition, it was estimated that a total allowable catch (TAC) of 2,853 scalloped hammerhead sharks per year (or 69 percent of 2005 catch) would allow a 70 percent probability of rebuilding within 10 years. NMFS has reviewed this paper and concluded that: the assessment is complete; the assessment is an improvement over a 2008 aggregated species assessment for hammerhead sharks; and the assessment is appropriate for U.S. management decisions (76 FR 23794).

Changes From the Proposed Rule

In response to comments expressing concerns about enforcement challenges presented by the rule as proposed, NMFS added the words ''possess'' and ''or'' to paragraphs 635.21(c)(1)(ii), 635.22(a)(2) and 635.71(d)(18) to clarify the text, consistent with the ICCAT recommendations and domestic regulations, and improve enforceability both dockside and at-sea. In addition, there was a minor, clarifying changes to the regulatory text in paragraph 635.21(c)(1)(ii) to clarify that any one of the activities listed is prohibited. In 635.24, NMFS clarified application of the prohibition to both oceanic whitetip and hammerhead sharks through the addition of an introductory provision. NMFS also clarified that the gear operation and deployment restrictions in 635.21 limit retention in 635.24. The preferred alternatives from the proposed rule to prohibit the retention of oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks on Atlantic HMS commercially-permitted vessels that have PLL gear on board, and by recreational fishermen fishing with a General Category permit participating in a HMS tournament or those fishing under an HMS Angling or Charter/Headboat permit when tuna or tuna-like species are also retained, remained the same in the final rule.

Classification

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, and other applicable law.

NMFS prepared an environmental assessment for this rule that analyzes the impact on the environment as a result of this rule. In this action, NMFS is prohibiting retention of oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks in the Atlantic PLL, HMS Angling and HMS Charter/Headboat fisheries for tuna and tuna-like species consistent with ICCAT Recommendations 10–07 and 10–08. A copy of the environmental assessment is available from NMFS (see **ADDRESSES**).

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

A Final Regulatory Flexibility Analysis (FRFA) was prepared, as required by section 604 of the RFA (RFA). The FRFA describes the economic impact this rulemaking would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

In compliance with section 604(a)(1) of the RFA, the purpose of this rulemaking, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, is to implement ICCAT recommendations 10–07 and 10–08 pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act. This rulemaking will implement the ICCAT shark recommendations in the Atlantic HMS fisheries that target tuna and tuna-like species because NMFS considers these fisheries to be the ICCAT-managed fisheries. The regulatory changes would affect HMS vessels that catch sharks in association with tuna and tuna-like species, including commercial vessels that deploy PLL gear, General Category tuna vessels participating in registered HMS tournaments, and HMS Angling/Charter Headboat vessels fishing for billfish, swordfish, and tunas. This action is necessary to implement ICCAT recommendations pursuant to ATCA. In compliance with the ATCA, NMFS is required to implement domestic regulations consistent with recommendations adopted by ICCAT as necessary and appropriate.

Section 604(a)(2) of the RFA requires agencies to summarize significant issues raised by the public in response to the IRFA, the agency's assessment of such issues, and a statement of any changes made as a result of the comments.

NMFS received numerous comments on the proposed rule (76 FR 23935, April 29, 2011) during the comment period. A summary of these comments and NMFS' responses are included in Chapter 13 of the EA/RIR/FRFA and are included above. Although NMFS did not receive comment specifically on the IRFA, public comments were received in regards to the increase in regulatory discards by prohibiting the retention of oceanic whitetip and hammerhead sharks in the commercial PLL fishery. This rule would lead to an estimated annual increase in oceanic whitetip and hammerhead sharks discards of 50 and 181 sharks, respectively, by converting average annual landings into regulatory discards. NMFS estimates that vessels that landed oceanic whitetip and hammerhead sharks from 2005–2009 would incur annual economic losses of $109 and $314, respectively from having to discard these sharks. Logbook data indicate that under existing regulations, between 2005 and 2009, 87 percent of hammerhead sharks and 75 percent of oceanic whitetip sharks caught on PLL were discarded. NMFS does not know the rationale behind these discards, but assumes that vessel operators are choosing to discard these fish either because of existing retention limits or economic reasons. Participants using PLL gear typically target tuna and swordfish, which are both higher valued species than sharks. Retaining sharks on vessels with limited hold space may affect product quality of other higher-valued species. Also, vessels may be limited by current large coastal and pelagic shark retention limits, depending on what type of commercial shark permit they hold (directed or incidental), which may also be the cause of these discards. Therefore, no changes were made in the rule resulting from public comments in response to the IRFA.

Section 604(a)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. In accordance with the Small Business Administration (SBA) size standards, NMFS used the following thresholds to determine if an entity regulated under this action would be considered a small entity: average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. Using these thresholds, NMFS determined that all HMS permit holders are small entities. Specifically,

this action would apply to all participants in the Atlantic HMS commercial and recreational fisheries that target tuna and tuna-like species. As of October 2010, 248 vessels held a Tuna Longline permit and can be reasonably assumed to use PLL gear, 24,479 held an Atlantic HMS Angling permit, and 4,174 vessels held an Atlantic HMS Charter/Headboat permit. From 2005–2009, on average, 12 PLL landed oceanic whitetip sharks vessels per year and 25 PLL vessels landed hammerhead sharks vessels per year. These permitted vessels consist of commercial, recreational, and charter vessels as well as headboats. Vessels holding these permits could be affected by this action.

Under section 604(a)(4) of the RFA, agencies are required to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, record keeping, or other compliance requirements.

Under section 604(a)(6), agencies are required to describe any alternatives to the final rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in the Environmental Assessment for the final action. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there were no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this rulemaking and provides rationale for identifying the preferred alternatives to achieve the desired objective.

NMFS has prepared this FRFA to analyze the impacts on small entities of the alternatives for implementing ICCAT shark recommendations for all domestic fishing categories that target tuna and tuna-like species. The FRFA assessed the impacts of the various alternatives on the vessels that participate in the Atlantic HMS commercial and recreational fisheries that target tuna and tuna-like species, all of which are considered small entities. Three alternatives were considered and analyzed and include (A1) no action; (A2) implementing the ICCAT shark recommendations in the commercial PLL fishery for tuna and tuna-like species; and (A3) implementing the ICCAT shark recommendations in the HMS Angling and Charter/Headboat fisheries for tuna and tuna-like species.

Under the No Action Alternative, A1, there would be no additional economic impacts to HMS vessels fishing for tuna and tuna-like species. Commercial vessels that fish for tuna and tuna-like species that are also currently authorized to land oceanic whitetip and hammerhead sharks would be able to continue that practice. Total gross average annual revenues from oceanic whitetip and hammerhead shark meat and fins from all vessels that fished for tuna or tuna-like species from 2005 through 2009 was approximately $9,155 per year across all vessels (37 vessels) or $247 per vessel per year. Vessels fishing recreationally for tuna or tuna-like species would continue to have the ability to retain an oceanic whitetip or hammerhead shark along with a tuna or tuna-like species on the same recreational trip under the No Action Alternative.

Under Alternative A2, a preferred alternative, ICCAT shark recommendations would be applied to PLL vessels fishing commercially for tuna and tuna-like species. This alternative would prohibit retention of oceanic whitetip and hammerhead sharks by PLL vessels. On average, from 2005 through 2009, 12 vessels/year kept oceanic whitetip sharks, and less than 2 percent of the total PLL trips kept oceanic whitetip sharks. An average of 1,462 lb of oceanic whitetip sharks were landed annually by these 12 pelagic longline vessels on average from 2005 through 2009. From 2005 through 2009, on average, 25 vessels/year kept hammerhead sharks, and less than 2 percent of the total PLL trips kept hammerhead sharks. On average, 9,493 lb in total were landed from 25 PLL vessels per year from 2005 through 2009. Gross average annual revenues from oceanic whitetip and hammerhead shark meat and fins from the 25 PLL vessels that fished for tuna or tuna-like species and kept oceanic whitetip or hammerhead sharks from 2005 through 2009 were approximately $9,155 per year across all vessels (37 vessels) or $247 per vessel per year. NMFS prefers Alternative 2 at this time, because it would implement ICCAT shark recommendations and would have minor adverse socioeconomic impacts on the PLL fishery.

Under Alternative A3, a preferred alternative, ICCAT shark recommendations would be applied to vessels holding a General Category permit when fishing in an HMS tournament or holding either an HMS Angling or Charter/Headboat permit fishing either recreationally or commercially for tuna and tuna-like species. This alternative would prohibit retention of oceanic whitetip and hammerhead sharks along with tuna and tuna-like species by vessels fishing recreationally and by Charter/Headboat permit holders fishing commercially. Although there are no instances of oceanic whitetip or hammerhead sharks retained along with tuna or tuna-like species in the LPS or MRFS data from 2005 through 2009, this alternative could limit fishing opportunities and lead to fewer fishing trips. Charter/Headboats could experience a decrease in trips as much of their business is based on providing recreational anglers the opportunity to catch hammerhead and oceanic whitetip sharks. However, because none of the surveyed Charter/Headboat trips landed oceanic whitetip and hammerhead sharks along with tuna or tuna-like species, NMFS anticipates the impacts to Charter/Headboats to be minor. NMFS prefers this alternative at this time, because it would implement ICCAT shark recommendations and would have minor, adverse socioeconomic impacts on the HMS Angling and Charter/Headboat fisheries.

The status quo alternative, Alternative A1, was not chosen even though it would have no additional economic impacts to HMS vessels fishing for tuna and tuna-like species, because it would not implement ICCAT Recommendations 10–07 and 10–08, which is the purpose of this rule. Alternatives A2 and A3 were selected, because they will implement the ICCAT recommendations and are anticipated to have minor, adverse economic impacts.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,

Reporting and recordkeeping requirements, Treaties.

Dated: August 19, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 635 is to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.21, paragraph (c)(1) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * **

(c) * * *

(1) If a vessel issued or required to be issued a permit under this part:

(i) Is in a closed area designated under paragraph (c)(2) of this section and has bottom longline gear onboard, the vessel may not, at any time, possess or land any pelagic species listed in Table 2 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

(ii) Has pelagic longline gear on board, persons aboard that vessel may not possess, retain, transship, land, sell, or store oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks.

* * * * *

■ 3. In § 635.22, paragraph (a) is revised to read as follows:

§ 635.22 Recreational retention limits.

(a) General—(1) Atlantic HMS caught, possessed, retained, or landed under these recreational limits may not be sold or transferred to any person for a commercial purpose. Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic Ocean including the Gulf of Mexico and Caribbean Sea, to a North Atlantic swordfish taken from or possessed in the Atlantic Ocean, and to bluefin and yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and for the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

(2) Vessels issued an HMS General Category permit under § 635.4(d) that are participating in a HMS registered tournament, vessels issued a HMS Angling category permit under § 635.4(c), or vessels issued a HMS Charter/Headboat permit under § 635.4(b) may not retain, possess or land oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks if swordfish, tuna, or billfish are retained or possessed on board, or offloaded from, the vessel. Such vessels also may not retain, possess or land swordfish, tuna, or billfish if oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks are retained or possessed on board, or offloaded from, the vessel.

* * * * *

■ 4. In § 635.24, the introductory paragraph is revised, and a new paragraph (a)(9) is added to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28, and the gear operation and deployment restrictions in § 635.21.

(a) * * *—

(9) Notwithstanding other provisions in this subsection, possession, retention, transshipment, landing, sale, or storage of oceanic whitetip sharks and scalloped, smooth, and great hammerhead sharks is prohibited on vessels issued a permit under this part that have PLL gear on board.

* * * * *

■ 5. In § 635.31, paragraph (c)(6) is added to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(c) * * *

(6) A dealer issued a permit under this part may not purchase oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board, or from the owner of a fishing vessel issued both a HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

* * * * *

■ 6. In § 635.71, paragraph (d)(19) is added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(19) Retain, possess, transship, land, store, sell or purchase oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks as specified in § 635.21(c)(1)(ii), § 635.22(a)(2), § 635.24, and § 635.31(c)(6).

* * * * *

[FR Doc. 2011–21732 Filed 8–26–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA659

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2011 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 27, 2011, through 1200 hrs, A.l.t., October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2011 TAC of pollock in Statistical Area 630 of the GOA is 6,811 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has

determined that the C season allowance of the 2011 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,761 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 22, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 24, 2011.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–22012 Filed 8–24–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 167
Monday, August 29, 2011

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 TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2011–0078]

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Mr. Michael R. Schramm, to amend the Federal motor vehicle safety standard on seat belt assemblies, to include a requirement that seat belts be releasable without unbuckling. We are denying the petition because the petitioner did not demonstrate a safety need for such a requirement or show how such a requirement could be implemented without increasing inadvertent release of seat belts during normal vehicle operation and certain crash scenarios, resulting in increased risk to vehicle occupants.

FOR FURTHER INFORMATION CONTACT:

For Non-Legal Issues: Ms. Carla Rush, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, Telephone: (202) 366–4583, Facsimile: (202) 493–2739.

For Legal Issues: Mr. Edward Glancy, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, Telephone: (202) 366–2992, Facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies,* includes a provision, S4.1(e) *Release,* that requires a seat belt assembly to provide a buckle that is readily accessible to the occupant to permit the easy and rapid removal of that occupant from the assembly. Furthermore, S4.3(d) *Buckle release,* requires the following:

(1) The buckle of a Type 1 or Type 2 seat belt assembly shall release when a force of not more than 133 N is applied.

(2) A buckle designed for pushbutton application of buckle release force shall have a minimum area of 452 mm^2 with a minimum linear dimension of 10 mm for applying the release force, or a buckle designed for lever application of buckle release force shall permit the insertion of a cylinder 10 mm in diameter and 38 mm in length to at least the midpoint of the cylinder along the cylinder's entire length in the actuation portion of the buckle release. A buckle having other design for release shall have adequate access for two or more fingers to actuate release.

(3) The buckle of a Type 1 or Type 2 seat belt assembly shall not release under a compressive force of 1,779 N applied as prescribed in paragraph S5.2(d)(3).[1] The buckle shall be operable and shall meet the applicable requirement of paragraph S4.4 [2] after the compressive force has been removed.

II. Petition

On December 8, 2009, Michael R. Schramm (henceforth referred to as the petitioner) petitioned NHTSA to amend FMVSS No. 209, to require seat belts to be releasable without unbuckling in response to a 5 pound (lb.) minimum seat belt assembly tension load when a vehicle is not moving faster than a threshold speed of 5 miles per hour (mph). Specifically, the petitioner recommended the incorporation of the following language in FMVSS No. 209, ''Said seat belt assembly shall release (without ''unlatching'' said buckle release mechanism) in response to a 5 lb. minimum load when and only when the vehicle in which said seat belt is installed is not moving at a speed of greater than 5 mph.'' The petitioner also included a copy of a November 23, 2009 nonprovisional patent application for an ''Adaptive Seatbelt Apparatus'' for which the petitioner was listed as the inventor. The petitioner provided a cost estimate of $3.50 per seating position for such a feature.

The petitioner cited several arguments in support of requiring seat belts to be releasable without unbuckling, including reducing the likelihood of death and injury of entrapped vehicle occupants. The petitioner cited the possibility of occupants being unable to extricate themselves from a vehicle due to a broken arm or hand. The petitioner also identified a case where a child almost got strangled by a seat belt. The petitioner further suggested there is a demand for such a feature as evidenced by the availability of seat belt cutting devices. He also suggested that seat belt use would increase, claiming a current lack of seat belt use by police officers who have the fear of being unable to immediately egress an engaged seat belt in emergency situations.

III. The Automotive Occupant Restraints Council's Comments

On March 1, 2010, the Automotive Occupant Restraints Council (AORC) submitted a letter to NHTSA declining support of Mr. Schramm's petition. The AORC provided the following reasons for declining to support the petition: (1) A stationary vehicle that is struck would likely experience a seat belt release as soon as the belt is loaded; (2) merely moving around in the vehicle, while the vehicle is stationary, could cause the seat belt to release without intent/awareness of the occupant, which, even if the occupant were aware of the situation, would likely be annoying; (3) it is not clear how the proposed tension load was determined as proper; (4) a child restrained in a seat could unlatch the seat belt during low speed maneuvers by pulling on it; and (5) in a slow rollover with no or low vehicle speed, a buckle could release as the vehicle lands on its roof. In summary, the AORC stated that these hazards far outweigh any potential benefit for the extremely rare cases cited by the petitioner.

[1] S5.2(d)(3) applies the force on a test line that is coincident with the center line of the belt extended through the buckle or on any line that extends over the center of the release mechanism and intersects the extended centerline of the belt at an angle of 60 degrees. The load shall be applied using a curved cylindrical bar placed with its longitudinal center line along the test line and its center directly above the point or the buckle to which the load will be applied.

[2] S4.4 contains the requirements for assembly performance, including strength tests, elongation requirements, breaking strength, and fracture resistance.

IV. Analysis of Petition

FMVSS No. 209 already requires the release mechanism to provide a rapid and easy removal from the seat belt assembly. The petitioner raised concern about extremely rare instances where crash deformation could cause the release mechanism to be damaged or become inaccessible. When such severe crashes occur, emergency medical services personnel use specialized equipment to extricate occupants. Also, should vehicle occupants be concerned about such a situation, there are aftermarket products, such as seat belt webbing cutters, that can be used. The petitioner also cited the possibility of vehicle occupants being unable to extricate themselves from their seat belt due to injuries (*i.e.,* broken arm/hand) as a reason for requiring seat belts to be releasable without unbuckling. However, if the occupant was impaired in such a way that they were unable to unbuckle their seat belt and relied on the seat belt to release without unbuckling, such injuries may also limit their ability to exit through the vehicle door or window. The issue raised by the petition is whether there is a safety need to justify rulemaking to consider revising the existing standard in the manner recommended by the petitioner. The following section discusses technical concerns identified by the agency.

A. Technical Concerns

The petitioner's main argument for seat belts that release without unbuckling is that they would reduce the likelihood of death and injury of entrapped vehicle occupants. However, it is unclear how the petitioner's request would be implemented to function without inadvertently releasing the seat belt during certain, more common, crash scenarios, *e.g.,* a vehicle struck while slowly traveling through an intersection or a vehicle struck while stopped. The petitioner argued that it could be possible to require seat belts to not release as petitioned if the vehicle is traveling below the specified speed threshold and it detects an imminent oncoming crash. However, to accomplish this, vehicles would further require integration of electrical signals from existing front and side crash sensor information into the mechanical system that controls the petitioned buckle release technology, and presumably also require additional crash sensors for rollover and rear-end crash events for vehicles without such sensors. Crash imminent sensors, or sensors that detect an impending crash, may also be needed.

It is also unclear how such a seat belt feature would perform during a slow rollover. NHTSA is concerned that releasing the seat belt in a slow rollover could increase the risk of occupant ejection and lead to rollover fatalities and serious injuries. Given that the petitioner did not go into the specifics [3] of how the integration of electrical signals from vehicle crash sensors would work with the requested mechanical seat belt feature, we have concerns that the system would not act in time to keep the occupants restrained before the tension load threshold was reached.

Such a feature would also be a potential risk during normal vehicle operation, *e.g.,* children who cannot sit still or reach for items when the vehicle is traveling below the 5 mph threshold would likely be required to continuously re-buckle their seat belts during trips, which poses a potential disturbance to the driver and a safety risk to the child. Of greater concern would be that the parent would not be aware that the child has inadvertently released their buckle. In addition, for adult occupants the inadvertent seat belt release would present a considerable annoyance.

The petitioner further suggested that by requiring such a feature, seat belt use would increase, especially among law enforcement and emergency response personnel that fear vehicle entrapment or being unable to immediately egress an engaged seat belt. While the petitioner provided a newspaper article that discussed police officers' concerns about time delays in tense situations if they have to undo their seat belt,[4] the petitioner did not demonstrate that police officer seat belt use would increase if the requested rule were adopted. Similarly, the petitioner also included only anecdotal information regarding children being injured or strangled by seat belts, which would not necessarily be addressed by the requested rule.

Finally, no information was provided to show how the petitioner determined that 5 lbs. was a proper tension load. The petitioner merely suggested that NHTSA can determine a more appropriate load, or alternatively, it could be designed with a release load that adjusts according to the occupant's size or weight. However, the agency currently has no data or research findings that would allow for the determination of an appropriate load value. For the technical reasons previously discussed, the agency has no plans to devote resources towards this at this time.

B. Preliminary Analysis of Real World Crash Data

Although the petitioner did not provide data showing a real world safety problem, the agency examined its crash data as part of considering the petition using the National Automotive Sampling System (NASS) Crashworthiness Data System (CDS) and Fatality Analysis Reporting System (FARS) data.[5]

Using 1997–2008 NASS data, the agency identified cases that: (1) Involved at least one death to a belted occupant who was not completely ejected and for which the case summary included text that suggested submersion, immersion, drowning, or asphyxiation; and (2) involved at least one death to a belted occupant who was not completely ejected and suffered a burn injury. Based on our review of these 65 cases (29 submersion cases and 36 burn cases), the agency could not conclude that any of the occupants would have benefitted from a rule requiring releasable without unbuckling seat belts. While 22 cases, a weighted estimate of 84 occupants (over the twelve-year period) were classified as having an ''unknown potential benefit'' from such a rule, many of those were unlikely to have benefitted because: Drugs and alcohol were involved, other damage to the vehicle may have impacted extrication (doors jammed shut), or the occupant may have been unconscious due to blunt force trauma and unable to extricate themselves.

The 2006–2008 FARS files were also searched for unejected belted occupants for whom ''safety belts'' was listed as a vehicle contributing factor, and three cases were identified. Upon review of the three FARS case Police Accident Reports, none of the fatalities was a result of not being able to unbuckle the seat belt.

We also considered the potential unintended consequences that could result from the petitioned change to FMVSS No. 209. As discussed in the previous section, there are several scenarios where releasable without unbuckling seat belts would not be desirable and may result in increased

[3] The petitioner's patent simply stated that the vehicle would have the means to detect vehicle speed, oncoming vehicle speed, occupant presence, occupant weight, etc., and that it would communicate such information as needed to appropriately actuate the invention, but it did not give specifics on how it would communicate with the apparatus. It further assumed that all vehicles would have all the cited detection capabilities.

[4] Fruhwirth, Jesse, Standard Examiner Davis Bureau, November 23, 2008, Page 1A.

[5] Refer to the technical analysis in the docket for this notice for further details.

risk to the vehicle occupants. For example, child passenger safety is an area of great importance to the agency. Children restrained using seat belts that can be inadvertently released presents a major safety concern, because children tend to move around more in their seats and could easily be unaware that the seat belt could release if loaded when the vehicle is stopped or travelling slowly. Similar risks could be present for children in child restraints. As a result of the inadvertent release of the seat belt by a child, the act of having to get the child restrained again during a trip would be a distraction for the driver and a large safety risk for the child. The child would be exposed to an even greater risk if no one is aware that the child is unrestrained and the child does not reattach their seat belt.

In the previous section we also discussed how occupants of a vehicle that is stationary [6] or travelling below the buckle release speed threshold that is involved in a collision would experience an inadvertent buckle release upon loading of the belt, and how rollovers are also a crash scenario where belts that are releasable without unbuckling would be undesirable from a safety perspective. These technical concerns and potential safety risks are insufficiently addressed by the petition. Further, the petitioner has not shown that his solution will not create additional problems, beyond those mentioned herein.

C. Analysis of Countermeasure Costs

The petitioner cited a cost of $3.50 countermeasure cost per seating position to comply with the petitioner's recommendation. However, we are dubious of this minimal cost estimate, since the petition did not account for the software and hardware integration necessary to monitor the vehicle speed and determine whether it is below the threshold for release. For seat belts to remain buckled if the vehicle is traveling below the threshold for release and an oncoming crash is detected, the device would require software and integration of crash imminent detection for existing front and side crash sensors and further installation cost and integration of rollover and rear-end crash sensors. Such costs were not accounted for in the petition.

V. Conclusion

FMVSS No. 209 already requires the release mechanism to provide a rapid and easy removal from the seat belt assembly. While the petitioner cites concerns about death and injury of entrapped vehicle occupants who are unable to unbuckle their seat belts, he does not demonstrate that this is an actual real-world safety problem of any significance. In rare instances where an extreme crash could cause the release mechanism to be damaged or become inaccessible, emergency medical services personnel also have their own specialized extrication equipment. Should vehicle occupants have a concern about such a situation, they can purchase aftermarket webbing cutters. The agency reviewed its data on fatal crashes and could not definitively conclude that any of the occupants would have benefitted from a rule requiring seat belts that are releasable without unbuckling. We also conclude that the potential for unintended consequences of inadvertent release of the seat belt during normal vehicle operation and certain crash scenarios, justify denying the petition.

Therefore, NHTSA is denying the petition to amend FMVSS No. 209 to include a new requirement that seat belts be releasable without unbuckling. In accordance with 49 CFR part 552, this completes the agency's review of the petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: August 19, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–21949 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–59–P

[6] A National Motor Vehicle Crash Causation Survey (DOT HS 811 059) conducted between July 3, 2005 and December 31, 2007 found that an estimated 16 percent (350,000) of the vehicles were stopped in the traffic lane prior to the crash event (pg. 22, Table 7).

Notices

Federal Register

Vol. 76, No. 167

Monday, August 29, 2011

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

Forest Service

Sierra County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) will meet in Downieville, California if needed to complete project review. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is to finish the discussion and vote on projects submitted for funding and the expenditure of Title II funds benefiting National Forest System lands in Sierra County. This meeting will be held if the discussion and vote was not completed at the meeting on September 12.

DATES: The meeting will be held Thursday, September 15, 2011 at 9 a.m.

ADDRESSES: The meeting will be held at the Downieville Community Hall, 327 Main St., Downieville, CA.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Tahoe National Forest Headquarters, 631 Coyote St., Nevada City, CA. Please call ahead to 530–478–6205 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, Tahoe National Forest, 530–478–6205, e-mail: *awestling@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Welcome and Introductions; (2) Review of Meeting Notes from September 12 Meeting; (3) Continuation of Discussion and Vote on Proposed Projects; and (4) Comments from the Public. (Note: This is a back-up meeting if the vote was not completed on September 12.) The agenda may be viewed at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf*. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 12, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Ann Westling, Tahoe National Forest, 631 Coyote St., Nevada City, CA 95959 or by e-mail to *awestling@fs.fed.us* or via facsimile to 530–478–6109. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* within 21 days of the meeting.

Dated: August 23, 2011.

Tom Quinn,

Forest Supervisor.

[FR Doc. 2011–22033 Filed 8–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) will meet in Sierraville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is to discuss and vote on projects submitted for funding and the expenditure of Title II funds benefiting National Forest System lands in Sierra County.

DATES: The meeting will be held Monday, September 12, 2011 at 9 a.m.

ADDRESSES: The meeting will be held at the Sierraville Ranger Station, 317 S. Lincoln, (Highway 89) Sierraville, CA.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Tahoe National Forest Headquarters, 631 Coyote St., Nevada City, CA. Please call ahead to 530–478–6205 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, Tahoe National Forest, 530–478–6205, e-mail: *awestling@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed for further information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Welcome and Introductions; (2) Review of RAC Operating Guidelines; (3) Discussion of Proposed Projects; (4) Vote on Proposed Projects; and (5) Comments from the Public. The agenda may be viewed at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* . Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 5, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Ann Westling, Tahoe National Forest, 631 Coyote St, Nevada City, CA 95959 or by e-mail to *awestling@fs.fed.us* or via facsimile to 530–478–6109. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* within 21 days of the meeting.

Dated: August 23, 2011.

Tom Quinn,

Forest Supervisor.

[FR Doc. 2011–22034 Filed 8–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nevada and Placer Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nevada and Placer Counties Resource Advisory Committee (RAC) will meet in Auburn, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is to discuss and vote on projects submitted for funding and the expenditure of Title II funds benefiting National Forest System lands in Nevada and Placer Counties.

DATES: The meeting will be held Tuesday, September 20, 2011 at 10 a.m.

ADDRESSES: The meeting will be held at the Placer County Water Agency, 144 Ferguson Rd, Auburn, CA.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Tahoe National Forest Headquarters, 631 Coyote St, Nevada City, CA. Please call ahead to 530–478–6205 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, Tahoe National Forest, 530–478–6205, *e-mail: awestling@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed for further information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Welcome and Introductions; (2) Review of September 16 Meeting Notes; (3) Continuation of the Discussion and Vote on Proposed Projects; and (4) Comments from the Public. The agenda may be viewed at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 16, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Ann Westling, Tahoe National Forest, 631 Coyote St, Nevada City, CA 95959 or by e-mail to *awestling@fs.fed.us* or via facsimile to 530–478–6109. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* within 21 days of the meeting.

Dated: August 23, 2011.

Tom Quinn,

Forest Supervisor.

[FR Doc. 2011–22017 Filed 8–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nevada and Placer Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nevada and Placer Counties Resource Advisory Committee (RAC) will meet in Truckee, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is to discuss and vote on projects submitted for funding and the expenditure of Title II funds benefiting National Forest System lands in Nevada and Placer Counties.

DATES: The meeting will be held Friday, September 16, 2011 at 10 a.m.

ADDRESSES: The meeting will be held at the Truckee Ranger Station, 10811 Stockrest Springs, Truckee, CA. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Tahoe National Forest Headquarters, 631 Coyote St, Nevada City, CA. Please call ahead to 530–478–6205 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, Tahoe National Forest, 530–478–6205, e-mail: *awestling@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Welcome and Introductions; (2) Review of September 14 Meeting Notes;

(3) Continuation of the Discussion and Vote on Proposed Projects; and (4) Comments from the Public. The agenda may be viewed at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf*. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 5, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Ann Westling, Tahoe National Forest, 631 Coyote St, Nevada City, CA 95959 or by e-mail to *awestling@fs.fed.us* or via facsimile to 530–478–6109. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* within 21 days of the meeting.

Dated: August 23, 2011.

Tom Quinn,

Forest Supervisor.

[FR Doc. 2011–22027 Filed 8–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

GMUG Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The GMUG Resource Advisory Committee will meet in Delta, Colorado. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to gather the appointed committee members together to decide the review and recommending criteria that the committee will use and to review and make recommendations for Title II Project funding within Garfield, Mesa, Delta, Gunnison and Montrose Counties, Colorado.

DATES: The meeting will be held Wednesday, September 28, 2011 at 1 p.m.

ADDRESSES: The meeting will be held at the Forest Supervisor's Office at 2250 Highway 50, Delta, Colorado in the South Spruce Conference Room. Written comments should be sent to Attn: GMUG RAC, 2250 Highway 50, Delta, CO 81416. Comments may also be sent via e-mail to *lloupe@fs.fed.us* or via facsimile to Attn: Lee Ann Loupe, RAC Coordinator at 970.874.6698.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at *http://www.fido.gov/facadatabase* under GMUG RAC information. Please call ahead to 970.874.6717 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Lee Ann Loupe, RAC Coordinator, Grand Mesa, Uncompahgre & Gunnison National Forests, 970.874.6717 (phone), 970.874.6660 (TTY), *lloupe@fs.fed.us*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed for further information.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: The appointed Committee members will be updated on current projects that were recommended and approved by the RAC; review and discuss the projects that were submitted to the Committee by August 19; and make recommendations for funding/approval of those projects to utilize Title II funds within Garfield, Mesa, Delta, Gunnison and Montrose Counties, Colorado.

The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 12, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 2250 Highway 50 Delta, CO 81416 or by e-mail to *lloupe@fs.fed.us* or via facsimile to Attn: Lee Ann Loupe 970.874.6698. A summary of the meeting will be posted at Federal Advisory Committee Web site at: *http://www.fido.gov/facadatabase* within 21 days of the meeting.

Dated: August 22, 2011.

Sherry Hazelhurst,

Deputy Forest Supervisor/GMUG RAC DFO.

[FR Doc. 2011–22036 Filed 8–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nevada and Placer Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nevada and Placer Counties Resource Advisory Committee (RAC) will meet in Nevada City, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is to discuss and vote on projects submitted for funding and the expenditure of Title II funds benefiting National Forest System lands in Nevada and Placer Counties.

DATES: The meeting will be held Wednesday, September 14, 2011 at 10 a.m.

ADDRESSES: The meeting will be held at the Tahoe National Forest Headquarters, 631 Coyote St, Nevada City, CA. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Tahoe National Forest Headquarters, 631 Coyote St, Nevada City, CA. Please call ahead to 530–478–6205 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, Tahoe National Forest, 530–478–6205, *e-mail: awestling@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign

language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed for further information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Welcome and Introductions; (2) Review of RAC Guidelines; (3) Discussion and Vote on Proposed Projects; and (4) Comments from the Public. The agenda may be viewed at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf*. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 5, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Ann Westling, Tahoe National Forest, 631 Coyote St, Nevada City, CA 95959 or by e-mail to *awestling@fs.fed.us* or via facsimile to 530–478–6109. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* within 21 days of the meeting.

Dated: August 23, 2011.

Tom Quinn,

Forest Supervisor.

[FR Doc. 2011–22030 Filed 8–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Travel and Tourism Advisory Board: Meeting of the U.S. Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda for an open meeting of the U.S. Travel and Tourism Advisory Board (Board). The agenda may change to accommodate Board business. The final agenda will be posted on the Department of Commerce Web site for the Board at *http://tinet.ita.doc.gov/TTAB/TTAB_Home.html.* At the meeting, the Board will hear and deliberate on proposed recommendations to be presented by the Advocacy and Research subcommittees. The Board also will summarize all recommendations adopted throughout its 2009–2011 charter term in a final presentation to the Secretary of Commerce.

DATES: September 14, 2011, 10 a.m.–12:30 p.m. Eastern Daylight Time (E.D.T.).

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Suite 4830, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, the U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, *telephone:* 202–482–4501, *e-mail: jennifer.pilat@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was re-chartered in August 2011, to advise the Secretary of Commerce on matters relating to the U.S. travel and tourism industries.

Topics to be considered: During this first meeting of the Board's new charter term, the Board will hear updates from two Board subcommittees on Advocacy and Research. Representatives from the Departments of Homeland Security, State and Transportation will also provide updates on their respective agencies' work relating to the U.S. travel and tourism industries, and updates on their respective agencies' work relating to the recommendations of the Travel Facilitation, Advocacy and Marketing, Outreach and Coordination subcommittees presented at prior meetings and adopted by the Board. The Board will hear and deliberate on proposed recommendations to be presented by the Advocacy and Research subcommittees. The Board also will summarize all recommendations adopted throughout its 2009–2011 charter term in a final presentation to the Secretary of Commerce.

Public Participation: The meeting will be open to the public and will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Because of building security and logistics, all attendees must pre-register no later than 5 p.m. Eastern Daylight Time (EDT) on Wednesday, September 7, 2011 with Jennifer Pilat, the U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–4501, *jennifer.pilat@trade.gov.* Please specify any requests for sign language interpretation, other auxiliary aids, or other reasonable accommodation no later than 5 p.m. E.D.T. on September 7, 2011, to Jennifer Pilat at the contact information above. Last minute requests will be accepted, but may be impossible to fill.

No time will be available for oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Jennifer Pilat at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. E.D.T. on September 7, 2011, to ensure transmission to the Board prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting. Copies of Board meeting minutes will be available within 90 days of the meeting.

Dated: August 16, 2011.

Jennifer Pilat,

Executive Secretary, U.S. Travel and Tourism Advisory Board.

[FR Doc. 2011–21989 Filed 8–26–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board, NIST will hold an open meeting on Wednesday, September 21, 2011, from 8:30 a.m. to 5 p.m.

DATES: The meeting will convene September 21, 2011, at 8:30 a.m. and will adjourn at 5 p.m. on September 21, 2011.

ADDRESSES: The meeting will be held at the Information Technology and Innovation Foundation (ITIF) Offices, 1101 K Street, NW., Suite 610, Washington, DC 20005. Please see admission instructions in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Karen Lellock, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg,

Maryland 20899–4800, telephone number (301) 975–4269.

SUPPLEMENTARY INFORMATION: The MEP Advisory Board is composed of 10 members, appointed by the Director of NIST. MEP is a unique program consisting of centers across the United States and Puerto Rico with partnerships at the state, federal, and local levels. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. This meeting will focus on (1) Recent studies on international benchmarking of manufacturing support programs, (2) an update on MEP's Next Generation Strategy, and (3) discussion of innovation strategies for manufacturers including recent MEP Center and client experiences. The agenda may change to accommodate other Board business.

Admission Instructions: Anyone wishing to attend this meeting should submit their name, e-mail address, and phone number to Karen Lellock (*Karen.lellock@nist.gov* or 301–975–4269) no later than September 19, 2011.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the beginning of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no more than three to five minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the MEP Advisory Board, National Institute of Standards and Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, or via fax at (301) 963–6556, or electronically by e-mail to *karen.lellock@nist.gov.*

Dated: August 22, 2011.

Phillip A. Singerman,

Associate Director for Innovation and Industry Services.

[FR Doc. 2011–21988 Filed 8–26–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2011–0032]

Establishing a One-Year Retention Period for Patent-Related Papers That Have Been Scanned Into the Image File Wrapper System or the Supplemental Complex Repository for Examiners

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for Comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is considering establishing a retention period of one year for patent-related papers that have been scanned into the Image File Wrapper system (IFW) or the Supplemental Complex Repository for Examiners (SCORE). Specifically, the USPTO is considering establishing a one-year retention period that begins on September 1, 2011, for papers scanned into IFW or SCORE prior to September 1, 2011; or a paper's submission date, for papers scanned into IFW or SCORE on or after September 1, 2011. After the expiration of the one-year retention period (after September 1, 2012, or later), the USPTO would dispose of the paper unless, within sufficient time prior to disposal of the paper, the relevant patent applicant, patent owner, or reexamination party files a *bona fide* request to correct the electronic record of the paper in IFW or SCORE, and the request remains outstanding at the time disposal of the paper would have otherwise occurred. Establishing a one-year retention period for papers scanned into IFW or SCORE would replace the USPTO's past practice of indefinitely retaining the papers, which has been rendered unnecessary and cost-ineffective by improvements in scanning and indexing.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before October 28, 2011. No public hearing will be held.

ADDRESSES: Comments concerning this notice may be sent by electronic mail message over the Internet addressed to *IFWPaperRetention@uspto.gov,* or submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the USPTO Internet Web site (address: *http://www.uspto.gov*). Because comments will be available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7728, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Raul Tamayo.

SUPPLEMENTARY INFORMATION: IFW is the USPTO's system for electronically storing and maintaining the files of patent applications and reexamination proceedings. The image files in IFW for patent applications and reexamination proceedings are the official records of those patent applications and reexamination proceedings. *See Changes to Implement Electronic Maintenance of Official Patent Application Records,* 68 FR 38611 (June 30, 2003), 1272 *Off. Gaz. Pat. Office* 197 (July 29, 2003). The USPTO stores in IFW documents it receives over the Electronic Filing System—Web (EFS-Web). In particular, the USPTO converts Portable Document Format (PDF) files submitted by users into Tagged Image File Format (TIFF) image files and then stores the TIFF image files in IFW as part of the official record for the relevant patent application or reexamination proceeding. The USPTO also stores in IFW as part of the official record of a patent application or reexamination proceeding the image files that it creates when it scans documents filed in paper, *i.e.,* filed by mail, at the USPTO's Customer Service Window, or, when permitted, facsimile. After being scanned into IFW, the papers are no longer part of the official record.

Since July 1, 2003, the USPTO has been scanning into IFW newly received patent applications filed in paper. *See Notification of United States Patent and Trademark Office Patent Application Records being Stored and Processed in Electronic Form, 1271 Off. Gaz. Pat. Office 100 (June 17, 2003).* In particular, the USPTO since July 1, 2003, has been scanning into IFW newly received, paper-filed (1) Nonprovisional applications under 35 U.S.C. 111(a), (2) provisional applications under 35 U.S.C. 111(b), (3) plant applications under 35 U.S.C. 161, (4) design

applications under 35 U.S.C. 171, and (5) reissue applications under 35 U.S.C. 251. Newly received, paper-filed nonprovisional applications under 35 U.S.C. 371 have been scanned into IFW as of November 30, 2005, and newly received, paper-filed international applications under the Patent Cooperation Treaty have been scanned into IFW as of January 1, 2007. In addition, the USPTO since August 2004 has been scanning into IFW newly received, paper-filed requests for reexamination.

Once an application or request for reexamination has been scanned into IFW, follow-on documents that are filed in paper for the application or reexamination proceeding are scanned into IFW. Follow-on documents are documents filed after the initial submission of the application or request for reexamination which include, but are not limited to, the following: amendments, information disclosure statements (IDS), replies to Office actions and notices, evidence, petitions, and other documents filed after the filing of an application or request for reexamination. Additionally, the USPTO scans into IFW all USPTO communications for applications and requests for reexamination that have been scanned into IFW.

The USPTO has also scanned into IFW the paper file wrappers, *i.e.,* all of the papers, including the initial applications or requests for reexamination, follow-on documents, and USPTO communications, of many applications filed prior to July 1, 2003, and many requests for reexamination filed prior to August 2004. For example, between 2003 and 2005, the USPTO physically moved its principal office to Alexandria, Virginia. During that period, the USPTO scanned into IFW the paper file wrappers of many of the then-pending 600,000 patent applications. Further, the USPTO routinely scans into IFW the paper file wrappers of applications filed prior to July 1, 2003, that were not pending during the 2003–2005 transition. For example, such scanning occurs when a document, *e.g.,* a request for patent term extension under 35 U.S.C. 156, is filed that necessitates repeated viewing of the paper file wrapper by one or more USPTO employees.

Not all documents filed via EFS–Web or in paper are stored in IFW. For example, grayscale and color images are converted to black and white images when stored in IFW. Accordingly, documents such as photographs and color or grayscale drawings, which would be degraded if stored in IFW as black and white images, are not stored in IFW. Prior to 2007, documents that would be degraded if stored in IFW as black and white images were placed into Artifact Folders, and Artifact Sheets were then scanned into IFW as placeholders. By 2007, the USPTO had fully deployed SCORE, a data repository system designed to augment IFW with the capture and retrieval of non-standard content, such as color and grayscale drawings, complex tables, and sequence listings. Thus, since 2007, the USPTO stores in SCORE as part of the official record documents that would be degraded if stored in IFW as black and white images. In addition, the USPTO since 2007 scans into SCORE as part of the official record documents that were previously in Artifact Folders when, for example, an examiner makes a request to do so. When a document is stored in SCORE, a black and white copy of the document is stored in IFW along with a SCORE placeholder sheet.

Sequence listings and computer program listings, as well as documents that should not be entered initially (and must be filed in paper), such as trade secret, proprietary and/or protective order materials, are other examples of documents not stored in IFW, at least initially. Prior to the deployment of SCORE, sequence listings and computer program listings were placed into Artifact Folders with Artifact Sheets then scanned into IFW as placeholders. Since the deployment of SCORE, the USPTO has been storing sequence and computer program listings in SCORE as part of the official record. Documents that should not be entered initially (and must be filed in paper) are placed into Artifact Folders, and Artifact Sheets are then scanned into IFW as placeholders. If it is later determined that they should be entered into the official record, they are taken out of the Artifact Folders and scanned into IFW.

The USPTO stores in boxes the papers that it scans into IFW or SCORE. Scanned papers are boxed and stored in the order that they are scanned. A sample storage box of scanned documents may contain: newly received applications; follow-on documents for previously submitted applications; and USPTO communications for applications. It may also contain paper file wrappers of applications filed prior to July 1, 2003, that for some reason, *e.g.,* documents were filed that necessitated repeated viewing of the papers by one or more USPTO employees, were scanned into IFW at the time the box was being filled. Thus, while the image files of IFW are organized by application number or reexamination control number, paper sources of the image files are not. An application filed in paper in 2006 can be in one box, a follow-on document filed in paper in 2007 for the application can be in a second box, a 2008 USPTO communication for the application can be in a third box, etc.

To date, the USPTO has not disposed of any of the boxes of papers that it has scanned into IFW or SCORE, even though the scanned papers are no longer part of the official record. In total, the USPTO has accumulated approximately 235,700 boxes and stores them at a repository near Springfield, Virginia.

By not disposing of the boxes, the papers have remained available for comparison purposes in limited circumstances when issues arise concerning the electronic records of the papers in IFW. However, the number of issues that arise which actually require the USPTO to retrieve a box from storage has steadily declined in the years since the USPTO started scanning. The USPTO can identify two principal reasons for this declining trend: (1) Indexing techniques and scanning quality have improved over the years; and (2) the increased use of EFS–Web has led to a decrease in the amount of paper that is filed, thus leading to a decrease in the amount of paper that is scanned (the submission rate through EFS–Web has increased from 14% in 2006 to 90% in 2010).

In 2004, the USPTO scanned a total of 195,829,268 pages, and 17,363 issues arose which could have required the USPTO to retrieve a box from storage. In 2010, the total number of pages scanned by the USPTO fell to 24,895,341, and only 1,581 issues arose which could have required the USPTO to retrieve a box from storage. Furthermore, the USPTO was able to remedy most of the 1,581 issues without actually retrieving a box. The 1,581 issues that could have required the USPTO to retrieve a box from storage required the retrieval of only 225 boxes.

The 225 boxes which required retrieval from storage represent less than 0.10% of the USPTO's total of approximately 235,700 boxes. Furthermore, the content of the papers in the box most often (116 out of the 225 boxes) matched the content of the image files in IFW. Of the 225 boxes retrieved from storage by the USPTO in 2010, only 109 were used to scan one or more papers into IFW or SCORE or to create an Artifact Folder (impacting a total of 87 patent applications). For 45 of the 109 boxes, papers were scanned into SCORE or placed into Artifact Folders, usually because the papers were inadvertently not scanned into SCORE or placed into Artifact Folders in the first place. For 36 of the 109 boxes,

papers were scanned into IFW because IFW did not contain image files for one or more pages of the papers. For 21 of the 109 boxes, papers were re-scanned into IFW due to quality issues with the initial image files in IFW. Under the assumption that there was one scanned image problem for each of the 21 boxes, the image scanning quality rate is 99.999916% ((24,895,341–21)/24,895,341), which exceeds Six Sigma quality standards. Finally, 7 of the 109 boxes were retrieved to address indexing errors for very large submissions.

While the number of issues that arise which actually require the retrieval of a box from storage has steadily declined, the cost of storing the boxes is high and will only increase if the USPTO's past practice is left unchanged. At present, the annual cost of storing and maintaining the boxes is approximately $701,000. Thus, in 2010, the cost of correcting the 87 total applications impacted by the 225 box retrievals exceeded $8,000 per application. Additionally, the space currently used to store the boxes is projected to reach its capacity by mid-year 2012. At that time, more warehouse space will need to be acquired, further increasing the USPTO's storage costs. The USPTO's past practice of indefinitely retaining the boxes of papers that it scans into IFW or SCORE is therefore not cost-effective.

Establishing a definite period of retention for papers scanned into IFW or SCORE would address the cost-ineffectiveness of the USPTO's past practice and yield other advantages. For example, it would further encourage the use of EFS–Web. In addition, by providing paper filers with a definite period during which they may review and determine the accuracy of the electronic record and request any needed corrections, both the USPTO and the public benefit from greater assurance that the official record in IFW is correct.

For the foregoing reasons, the USPTO is considering establishing a one-year retention period for papers that have been scanned into IFW or SCORE. Specifically, the USPTO is considering establishing a one-year retention period that begins on: (1) September 1, 2011, for papers scanned into IFW or SCORE prior to September 1, 2011; or (2) the paper's submission date, for papers scanned into IFW or SCORE on or after September 1, 2011. A one-year retention period would be consistent with the USPTO's currently pending request to the National Archives and Records Administration (NARA) to transition from general records disposition authority GRS 20, item 2a(4) to the new USPTO-specific records disposition authority N1–241–10–1, item 4.4. Papers that have not been scanned into IFW or SCORE, such as certain papers placed into Artifact Folders, would not be subject to the one-year retention period and would remain retrievable consistent with past practice.

The USPTO considers the one-year retention period proposed in this notice to be preferable to shorter or longer retention periods. Retention periods of less than one year would not adequately meet the USPTO's objective of giving paper filers sufficient time to review their files and request corrections. Retention periods of more than one year would not sufficiently meet the USPTO's objectives of reducing storage costs and improving the quality of the official record in IFW. The USPTO considers that a retention period of one year would strike the best balance between these competing objectives. Moreover, a one-year retention period would be consistent with the USPTO's goal of reducing first action pendency to an average of 10 months by 2015.

If the USPTO adopts the one-year retention period proposed in this notice, the USPTO would dispose of the paper after the expiration of the one-year retention period (after September 1, 2012, or later), unless within sufficient time prior to disposal of the paper, the relevant patent applicant, patent owner, or reexamination party files a *bona fide* request to correct the electronic record of the paper in IFW or SCORE, and the request remains outstanding at the time the paper would have been scheduled for disposal. Filers of requests to correct the electronic record would be strongly advised to file their requests by EFS–Web using the document description ''Electronic Record Correction'' at least one month prior to the expiration of the one-year retention period to allow sufficient time to process the request. Requests that are not filed at least one month prior to the expiration of the one-year retention period may not be acted upon in time.

If the USPTO adopts the one-year retention period proposed in this notice, a patent applicant, patent owner, or reexamination party who, during the one-year retention period, is considering filing a request to correct the electronic record of a paper, and who believes that the evidence establishes that the need for correction was caused by the USPTO, would be advised to consider whether the initial submission date of the paper needs to be secured for the information being corrected. Such situations could involve (1) Adding information that would not otherwise be supported by the original specification, (2) avoiding a reduction in patent term adjustment, or (3) avoiding an impact on the timeliness of an information disclosure statement under 37 CFR 1.97. If the initial submission date of the paper does not need to be secured for the information being corrected, the patent applicant, patent owner, or reexamination party should simply submit a corrective replacement document and accept the date of such submission for the corrective replacement document. If, however, the initial submission date of the paper needs to be secured for the information being corrected, a request for correction based on the initially submitted paper should be filed as a petition under 37 CFR 1.181. The request should specifically point out the error(s) in the electronic record of the paper in IFW or SCORE and be accompanied by a replacement copy of the paper, along with (1) Any evidence to establish (a) that the need for correction was caused by the USPTO, and (b) the proper submission date of the original paper, and (2) a statement that the replacement copy is a true copy of what was originally filed.

When making a decision on the request, the USPTO's presumption would be that the electronic record of the paper in IFW or SCORE is accurate and correction is not merited. The USPTO would check to see whether it has the paper at issue. If the USPTO has the paper, the USPTO's version of the paper would either support the request for correction, in which case the request would be granted, or the USPTO's version of the paper would not support the request, in which case the request would be dismissed.

On the other hand, if the USPTO does not have the paper, *e.g.,* the paper has been lost, the presumption that the electronic record of the paper in IFW or SCORE is correct could be rebutted where the evidence submitted with the request is sufficient to overcome the presumption. A postcard receipt which itemizes and properly identifies the items that have been filed would serve as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. However, while a postcard receipt may be the only evidence needed for the USPTO to accept, for example, the missing tenth page of a 10-page document that has been properly identified on the postcard as a 10-page document, the postcard receipt may be insufficient, on its own, for the USPTO to accept a replacement tenth page of a properly identified 10-page document, where all 10 pages were actually

received by the USPTO and, for example, a sentence is missing on one page or a chemical structure is thought to have been changed.

Any decision dismissing a request to correct the electronic record would provide a two-month period to file a request for reconsideration of the decision, in accordance with 37 CFR 1.181(f).

The USPTO would not dispose of a paper for which, within sufficient time prior to disposal of the paper, a *bona fide* request to correct the electronic record of the paper has been filed and remains outstanding at the time the paper would have been scheduled for disposal. A request would be a *bona fide* request when it specifically points out the error(s) in the paper and is accompanied by any necessary evidence. A general allegation that a paper requires correction filed without evidentiary support would not be a *bona fide* request. It would be inadequate to stay the disposal of the paper and would be dismissed. Once filed, a *bona fide* request to correct the electronic record would remain outstanding unless the USPTO has either (1) Issued a decision granting either the original request or a request for reconsideration of the original request, or (2) issued a final agency decision denying a request for reconsideration of the original request.

If the USPTO adopts the one-year retention period proposed in this notice, a patent applicant, patent owner, or reexamination party who is considering filing a request to correct the electronic record of a paper, but who cannot establish that the need for correction was caused by the USPTO, would be advised to not file the request. Other options for relief may be available when it cannot be established that the need for correction was caused by the USPTO. For example, an amendment under 37 CFR 1.57(a) may be filed to address the problem of an application filed with inadvertently omitted material when the application contains a claim under 37 CFR 1.55 for priority of a prior-filed foreign application, or a claim under 37 CFR 1.78 for the benefit of a prior-filed provisional, nonprovisional, or international application. *See* MPEP § 201.17. As another example, an amendment may be filed to correct an obvious error, along with any evidence, such as an expert declaration, necessary to establish that one of ordinary skill in the art would recognize both the existence of the error and the appropriate correction. *See* MPEP § 2163.07, II.

If the USPTO adopts the one-year retention period proposed in this notice, a patent applicant, patent owner, or reexamination party may file a request to correct the electronic record of a paper after the one-year retention period, if the evidence is believed to establish that the need for correction was caused by the USPTO, and the initial submission date of the paper needs to be secured for the information being corrected. The USPTO likely would have disposed of any paper for which a request to correct the electronic record is filed after the one-year retention period. Therefore, the typical request for correction filed after the one-year retention period would have to overcome the presumption that the electronic record of the paper in IFW or SCORE is accurate and correction is not merited. For certain instances, *e.g.,* when a paper was inadvertently not scanned into SCORE or placed into an Artifact Folder, there would be a black and white image of the paper in IFW that could be used to corroborate any submitted evidence.

The proposed procedure set forth in this notice for filing a request to correct the electronic record of a paper that has been scanned into IFW or SCORE would not be a replacement for the USPTO's established procedure for responding to a notice (*e.g.,* a ''Notice of Omitted Item(s) in a Nonprovisional Application'') from the Office of Patent Application Processing (OPAP) indicating that the application papers have been accorded a filing date, but are lacking some page(s) of the specification or some of the figures of drawings described in the specification. Applicants would continue to follow the procedure set forth at *Change in Procedure for Handling Nonprovisional Applications Having Omitted Items, 1315 Off. Gaz. Pat. Office 103 (February 20, 2007),* when responding to such a notice from OPAP.

In addition, the proposed procedure set forth in this notice for filing a request to correct the electronic record of a paper that has been scanned into IFW or SCORE would be generally applicable only to situations in which a certain document, or one or more pages of a certain document, contains an error caused by the USPTO that requires correction. The proposed procedure set forth in this notice would not be a replacement for the USPTO's file reconstruction procedures (37 CFR 1.251 and MPEP § 508.04). Paper sources for the image files in IFW are boxed in the order that they are scanned, rather than by application number or reexamination control number, such that a request to correct requiring the retrieval of papers from multiple boxes could not be reasonably effected.

Dated: August 17, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–21964 Filed 8–26–11; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday, September 2, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: *Surveillance and Enforcement Matters.* In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–22148 Filed 8–25–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday, September 9, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: *Surveillance and Enforcement Matters.* In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–22152 Filed 8–25–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday, September 16, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–22155 Filed 8–25–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday, September 30, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site *at http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–22161 Filed 8–25–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday, September 23, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–22158 Filed 8–25–11; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency (DIA), Department of Defense (DoD).

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150 the Department of Defense announces that Defense Intelligence Agency Advisory Board and two of its subcommittees will meet on September 28 and 29, 2011. The meetings are closed to the public.

DATES: The meetings will be held on September 28, 2011 (from 8:30 a.m. to 5 p.m.) and on September 29, 2011 (from 8:30 a.m. to 2 p.m.).

ADDRESSES: The meeting will be held at Bolling Air Force Base.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Harrison, (703) 647–5102, Alternate Designated Federal Official, DIA Office for Congressional and Public Affairs, Pentagon, 1A874, Washington, DC 20340.

Committee's Designated Federal Official: Mr. William Caniano, (703) 614–4774, DIA Office for Congressional and Public Affairs, Pentagon, 1A874 Washington, DC 20340. *William.Caniano@dia.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

For the Advisory Board and its subcommittee to review and discuss DIA operations and capabilities in support of current operations.

Agenda

September 28, 2011

8:30 a.m. Convene Subcommittee Meetings—Mr. William Caniano, Designated Federal Official; Mrs. Mary Margaret Graham, Chairman.
10 a.m. Break
10:15 a.m. Subcommittee Business
12 p.m. Lunch
1 p.m. Reconvene for Subcommittee business.
3 p.m. Break
3:15 p.m. Subcommittee business
5 p.m. Adjournment

September 29, 2011

8:30 a.m. Convene Full Advisory Board Meeting and Administrative Business—Mr. William Caniano, Designated Federal Official; Mrs. Mary Margaret Graham, Chairman.
9 a.m. Briefings and Discussion with LTG Burgess, Director, DIA.
11:30 a.m. Lunch
12:30 p.m. Attend DIA 50th Anniversary Ceremony with LTG Burgess, Director, DIA.
2 p.m. Adjourn

Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.155, the Defense Intelligence Agency has determined that all meetings shall be closed to the public. The Director, DIA, in consultation with his General Counsel, has determined in writing that the public interest requires that all sessions of the Board's meetings will be closed to the public because they will be concerned with classified information and matters covered by 5 U.S.C. 552b(c)(1).

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Board Committee Act of 1972, the public or interested organizations may submit written statements at any time to the DIA Advisory Board regarding its missions and functions. All written statements shall be submitted to the Designated Federal Official for the DIA Advisory Board. He will ensure that written statements are provided to the membership for their consideration. Written statements may also be submitted in response to the stated agenda of planned committee meetings. Statements submitted in response to this notice must be received by the Designated Federal Official at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after that date may not be provided or considered by the Board until its next meeting. All submissions provided before that date will be presented to the Board members before the meeting that is subject of this notice. Contact information for the Designated Federal Official is listed

under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 24, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–22004 Filed 8–26–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–470]

South Carolina Electric & Gas Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project No:* 516–470.

c. *Date Filed:* August 9, 2011.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* The project is located on the Saluda River in Lexington, Newberry, Richland, and Saluda counties, South Carolina. The proposed action would occur on Lake Murray in Lexington County, South Carolina.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Tommy Boozer, Manager, Lake Management Programs, South Carolina Electric & Gas Company, 6248 Bush River Road, Columbia, SC 29212, telephone 803–217–9007.

i. *FERC Contact:* Any questions on this notice should be addressed to Lorance Yates at 678–245–3084 or e-mail: *lorance.yates@ferc.gov.*

j. *Deadline for filing comments and or motions:* September 22, 2011.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–516–470) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee proposes to permit the Columbia Sailing Club to use project lands and water to modify an existing facility by adding four floating docks and the removal of three existing floating docks on Lake Murray. The proposed new structures are for private commercial use by members of the Columbia Sailing Club. Docks will be attached to high ground by walkways and will be installed parallel to the existing boat ramp to facilitate launching. The purpose of the project, as stated by the licensee, is to assist members of the Columbia Sailing Club in boat launching and provide 20 new slips.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits (P–516) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: August 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21982 Filed 8–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3980–001.
Applicants: ORNI 14 LLC.
Description: ORNI 14 submits tariff filing per 35.17(b): ORNI 14 LLC Amendment to Petition to be effective 7/2/2011.
Filed Date: 08/22/2011.
Accession Number: 20110822–5032.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 06, 2011.

Docket Numbers: ER11–4342–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Certificate of Concurrence in ER10–1657–000 regarding the NYISO–PJM JOA to be effective, 9/17/2010.
Filed Date: 08/22/2011.
Accession Number: 20110822–5016.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: ER11–4343–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Certificate of Concurrence in ER11–3663–000 regarding the NYISO–PJM JOA to be effective 9/17/2010.
Filed Date: 08/22/2011.
Accession Number: 20110822–5017.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: ER11–4344–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Certificate of Concurrence in ER11–3814 regarding the NYISO–PJM JOA to be effective 9/17/2010.
Filed Date: 08/22/2011.
Accession Number: 20110822–5018.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: ER11–4345–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV SCE–GPS 13230 San Bernardino Ave., Fontana Roof Top Solar Project to be effective 8/23/2011.
Filed Date: 08/22/2011.
Accession Number: 20110822–5037.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

Docket Numbers: ER11–4346–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC submits tariff filing per 35.13(a)(2)(iii: Filing of an Interconnection Agreement to be effective 10/22/2011.
Filed Date: 08/22/2011.
Accession Number: 20110822–5062.
Comment Date: 5 p.m. Eastern Time on Monday, September 12, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–21995 Filed 8–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2172–005; ER10–2174–005; ER10–2176–005; ER10–2180–005; ER10–2178–005; ER10–2192–005; ER10–2184–005; ER10–2183–003; ER10–3308–005; ER10–2281–005; ER10–2780–001.
Applicants: Constellation Energy Commodities Group, Constellation NewEnergy, Inc., Baltimore Gas and Electric Company, Constellation Power Source Generation Inc., CER Generation II, LLC, Safe Harbor Water Power Corporation, Handsome Lake Energy, LLC, CER Generation, LLC, Constellation Energy Commodities Group Maine, LLC, Constellation Mystic Power, LLC, Criterion Power Partners, LLC.
Description: Notice of Change in Status of Baltimore Gas and Electric Company, et al.
Filed Date: 08/19/2011.
Accession Number: 20110819–5092.
Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Docket Numbers: ER10–2179–006; ER10–2181–006; ER10–2182–006.
Applicants: R.E. Ginna Nuclear Power Plant, LLC, Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC.
Description: Notice of Change in Status of Calvert Cliffs Nuclear Power Plant, LLC, et al.
Filed Date: 08/19/2011.
Accession Number: 20110819–5091.
Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Docket Numbers: ER11–2201–003; ER10–2462–001; ER10–2466–001.
Applicants: Evergreen Wind Power III, LLC, Evergreen Wind Power V, LLC, Stetson Wind II, LLC.
Description: First Wind Holdings, LLC submits Notification of Non-material Change in Status by Evergreen Wind Power III, LLC, Evergreen Wind Power V, LLC and Stetson Wind II, LLC.
Filed Date: 08/18/2011.
Accession Number: 20110818–5116.
Comment Date: 5 p.m. Eastern Time on Thursday, September 08, 2011.

Docket Numbers: ER11–3859–002; ER11–3864–002; ER11–3866–002; ER11–3867–002; ER11–3857–002.
Applicants: Milford Power Company, LLC, MASSPOWER, Lake Road Generating Company, L.P., EquiPower Resources Management, LLC, Dighton Power, LLC.
Description: Notice of Change in Status for ECP II MBR Sellers.
Filed Date: 08/19/2011.
Accession Number: 20110819–5079.
Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Docket Numbers: ER11–3986–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Amendment to 1765R4 KCPL–GMO NITSA NOA to be effective 6/1/2011.
Filed Date: 08/19/2011.
Accession Number: 20110819–5035.
Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Docket Numbers: ER11–4264–001.
Applicants: New England Power Company.
Description: New England Power Company submits tariff filing per 35: Errata to Filing to Implement Settlement Agreement to be effective 3/31/2011.
Filed Date: 08/19/2011.
Accession Number: 20110819–5056.
Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Docket Numbers: ER11–4335–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc.

submits tariff filing per 35.13(a)(2)(iii: G749 GIA Termination to be effective 10/18/2011.

Filed Date: 08/18/2011.

Accession Number: 20110818–5100.

Comment Date: 5 p.m. Eastern Time on Thursday, September 08, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–2–000.

Applicants: Portland General Electric Company.

Description: Refiling of the Quarterly Site Acquisition Report of Portland General Electric Company to more clearly identify the geographic market.

Filed Date: 08/19/2011.

Accession Number: 20110819–5031.

Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–22000 Filed 8–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–107–000.

Applicants: Portsmouth Genco, LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Portsmouth Genco, LLC.

Filed Date: 08/19/2011.

Accession Number: 20110819–5131.

Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4336–000; ER11–4336–001.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Order 745 Compliance Filing—Transition Rules—Part I of II to be effective 6/1/2012; Part II of II to be effective 6/1/2015.

Filed Date: 08/19/2011.

Accession Number: 20110819–5044; *20110819–5046.*

Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Docket Numbers: ER11–4337–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 08–19–11 Order 745 Compliance to be effective 4/1/20110.

Filed Date: 08/19/2011.

Accession Number: 20110819–5106.

Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Docket Numbers: ER11–4338–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35: Demand Response Compensation Order 745 to be effective 12/31/9998.

Filed Date: 08/19/2011.

Accession Number: 20110819–5114.

Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Docket Numbers: ER11–4339–000.

Applicants: ENBALA Power Networks (USA), Inc.

Description: ENBALA Power Networks (USA), Inc. submits tariff filing per 35.12: ENBALA Power Networks (USA) Inc. Market Based Rate to be effective 11/1/2011.

Filed Date: 08/19/2011.

Accession Number: 20110819–5117.

Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Docket Numbers: ER11–4340–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2011–08–19 CAISO TMCC Amendment Filing to be effective 10/19/2011.

Filed Date: 08/19/2011.

Accession Number: 20110819–5120.

Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Docket Numbers: ER11–4341–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: PJM Queue No. U3–029/U3–030; Original Service Agreement No. 2988 to be effective 7/20/2011.

Filed Date: 08/19/2011.

Accession Number: 20110819–5121.

Comment Date: 5 p.m. Eastern Time on Friday, September 09, 2011.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM11–4–000.

Applicants: Southern Indiana Gas & Electric Company.

Description: Application to Terminate QF Mandatory Purchase Obligation of Southern Indiana Gas & Electric Company.

Filed Date: 08/19/2011.

Accession Number: 20110819–5133.

Comment Date: 5 p.m. Eastern Time on Friday, September 16, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–22001 Filed 8–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

* * * * *

Docket Numbers: RP11–2396–000.
Applicants: CenterPoint Energy—Mississippi River Transmission, LLC.
Description: CenterPoint Energy—Mississippi River Transmission, LLC submits tariff filing per 154.204: ACA Filing-2011 to be effective 10/1/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5020.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: RP11–2397–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: Cheniere Creole Trail Pipeline, L.P. submits tariff filing per 154.402: Semi ACA Filing to be effective 10/1/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5059.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: RP11–2398–000.
Applicants: Granite State Gas Transmission, Inc.
Description: Granite State Gas Transmission, Inc. submits tariff filing per 154.402: ACA Change to Section 4 to be effective 10/1/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5065.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: RP11–2399–000.
Applicants: Chandeleur Pipe Line Company.
Description: Chandeleur Pipe Line Company submits tariff filing per 154.402: Chandeleur Pipe Line Company 2011 ACA Filing to be effective 10/1/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5088.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: RP11–2400–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.501: Report of Refund Transco's GSS LSS Customers Share of DTI Penalty Revenue 2011 to be effective N/A.
Filed Date: 08/18/2011.
Accession Number: 20110818–5092.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: RP11–2401–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits tariff filing per 154.402: Equitrans, L.P. 2011 Annual Charge Adjustment Filing to be effective 10/1/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5093.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: RP11–2402–000.
Applicants: Northern Border Pipeline Company.
Description: Northern Border Pipeline Company submits tariff filing per 154.203: Princeton Lateral Compliance to CP10–468 to be effective 12/31/9998.
Filed Date: 08/19/2011.
Accession Number: 20110819–5010.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: RP11–2403–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits tariff filing per 154.204: ACA 2011 to be effective 10/1/2011.
Filed Date: 08/22/2011.
Accession Number: 20110822–5049.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 06, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

* * * * *

Docket Numbers: RP11–2183–001.
Applicants: Gas Transmission Northwest Corporation.
Description: Gas Transmission Northwest Corporation submits tariff filing per 154.203: RP11–2183 Compliance to be effective 4/11/2011.
Filed Date: 08/22/2011.
Accession Number: 20110822–5015.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 06, 2011.

Docket Numbers: RP11–2092–002.
Applicants: Big Sandy Pipeline, LLC.
Description: Big Sandy Pipeline, LLC submits tariff filing per 154.203: Order 587–U Compliance Filing to be effective 8/16/2011.
Filed Date: 08/19/2011.
Accession Number: 20110819–5075.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: RP11–2396–001.
Applicants: CenterPoint Energy—Mississippi River Transmission, LLC.
Description: CenterPoint Energy—Mississippi River Transmission, LLC submits tariff filing per 154.205(b): Amended ACA Filing—2011 to be effective 10/1/2011.
Filed Date: 08/19/2011.
Accession Number: 20110819–5055.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 31, 2011.

Docket Numbers: RP11–2387–001.
Applicants: Sabine Pipe Line LLC.
Description: Sabine Pipe Line LLC submits tariff filing per 154.205(b): Sabine Pipe Line LLC Amendment to 2011 ACA Filing to be effective 10/1/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5087.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: RP11–2387–002.
Applicants: Sabine Pipe Line LLC.
Description: Sabine Pipe Line LLC submits tariff filing per 154.205(b): Sabine Pipe Line LLC 2011 ACA Filing—Amendment to be effective 10/1/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5105.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Docket Numbers: RP09–882–001.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company's Annual Gas Sales Report for its Clay Basin Storage Reservoir for the 12-month period ending April 30, 2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5089.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2378–001.
Applicants: Carolina Gas Transmission Corporation.
Description: Carolina Gas Transmission Corporation submits tariff filing per 154.205(b): Amendment—ACA Filing (RP11–2378) to be effective 10/1/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5023.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–21998 Filed 8–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings; Filings Instituting Proceedings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–2382–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: FT, ESS, FDLS FOS—Credit Provisions from PA—Filing 2 to be effective 9/16/2011.
Filed Date: 08/16/2011.
Accession Number: 20110816–5060.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2383–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas files a Petition for a Limited Waiver of Northern's FERC Gas Tariff to resolve a prior period imbalance with the high Monthly Index Price for Tenaska Marketing Ventures.
Filed Date: 08/16/2011.
Accession Number: 20110816–5061.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2387–000.
Applicants: Sabine Pipe Line LLC.
Description: Sabine Pipe Line LLC submits tariff filing per 154.402: Sabine Pipe Line LLC 2011 ACA Filing to be effective 10/1/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5024.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2388–000.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: South Jersey 8–13–2011 Negotiated Rate to be effective 8/13/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5025.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2389–000.
Applicants: Kinder Morgan Interstate Gas Transmission LLC.
Description: Kinder Morgan Interstate Gas Transmission LLC submits tariff filing per 154.204: ACA 2011 to be effective 10/1/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5048.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2390–000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: TransColorado Gas Transmission Company LLC submits tariff filing per 154.204: ACA 2011 to be effective 10/1/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5051.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2391–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.402: 2011 ACA Filing—Resubmission to be effective 10/1/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5061.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2392–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.402: 2011 ACA Filing—Resubmission to be effective 10/1/201.
Filed Date: 08/17/2011.
Accession Number: 20110817–5063.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2393–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits tariff filing per 154.402: 2011 ACA Filing—Resubmission to be effective 10/1/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5066.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2394–000.
Applicants: Paiute Pipeline Company.
Description: Paiute Pipeline Company submits tariff filing per 154.402: Annual Charge Adjustment Filing to be effective 10/1/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5112.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: RP11–2395–000.
Applicants: Southwest Gas Transmission Company, A Limited Partnership.
Description: Southwest Gas Transmission Company, A Limited Partnership submits tariff filing per 154.402: Annual Charge Adjustment to be effective 10/1/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5117.
Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2011.

Docket Numbers: CP11–534–000.
Applicants: Abbreviated Application of PostRock KPC Pipeline, LLC for authorization to abandon leased capacity.
Filed Date: 08/15/2011.
Accession Number: 20110815–5091.
Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Docket Numbers: CP11–535–000.
Applicants: Enogex LLC's Petition for order authorizing abandonment of pipeline capacity lease and limited jurisdiction certificate and request for expedited action.
Filed Date: 08/15/2011.
Accession Number: 20110815–5177.
Comment Date: 5 p.m. Eastern Time on Friday, August 26, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 18, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–21997 Filed 8–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–106–000.
Applicants: Energy Plus Holdings LLC, Independence Energy Group LLC, NRG Energy, Inc, NRG Franklin Merger LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, Request for Expedited Treatment, and Request for Confidential Treatment of Energy Plus Holdings LLC and NRG Energy, Inc.

Filed Date: 08/17/2011.
Accession Number: 20110817–5131.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 07, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3881–001.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.17(b): NYISO amendment re: change effective date of ATC definition filing to be effective 10/24/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5109.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 07, 2011.

Docket Numbers: ER11–4041–001.
Applicants: Verde Energy USA Trading, LLC.
Description: Verde Energy USA Trading, LLC submits tariff filing per 35.17(b): Verde Energy FERC Application to be effective 8/17/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5110.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 07, 2011.

Docket Numbers: ER11–4328–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO Tariff Revisions: TCC Credit Requirements and Default Notifications to be effective 10/18/2011.
Filed Date: 08/17/2011.
Accession Number: 20110817–5128.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 07, 2011.

Docket Numbers: ER11–4329–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Amend SGIA WDT SERV AG SCE–GBU 2252 Palmetto Ave., Redlands Rooftop Solar Proj to be effective 8/19/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5002.
Comment Date: 5 p.m. Eastern Time on Thursday, September 08, 2011.

Docket Numbers: ER11–4330–000.
Applicants: ISO New England Inc., Vermont Electric Cooperative, Inc.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Schedule 21–VEC Revisions to be effective 4/1/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5005.
Comment Date: 5 p.m. Eastern Time on Thursday, September 08, 2011.

Docket Numbers: ER11–4331–000.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company submits tariff filing per 35.13(a)(2)(iii: FPL Revision to Attachment H–B Compliance Filing to be effective 9/1/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5017.
Comment Date: 5 p.m. Eastern Time on Thursday, September 08, 2011.

Docket Numbers: ER11–4332–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV AG SCE–GPS 2292 Palmetto Ave., Redlands, CA Roof Top Solar Project to be effective 8/19/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5036.
Comment Date: 5 p.m. Eastern Time on Thursday, September 08, 2011.

Docket Numbers: ER11–4333–000.
Applicants: Astoria Energy LLC.
Description: Astoria Energy LLC submits tariff filing per 35: Astoria Energy MBR E—Tariff to be effective 8/19/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5044.
Comment Date: 5 p.m. Eastern Time on Thursday, September 08, 2011.

Docket Numbers: ER11–4334–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA WDT SERV AG SCE–GPS 1897 Marigold Ave., Redlands, CA Roof Top Solar Project to be effective 8/19/2011.
Filed Date: 08/18/2011.
Accession Number: 20110818–5070.
Comment Date: 5 p.m. Eastern Time on Thursday, September 08, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 18, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–21996 Filed 8–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11836–001]

BMB Enterprises, Inc.; Notice of Surrender of Exemption

Pursuant to section 4.95(a) of the Commission's regulations,[1] BMB Enterprises, Inc. filed with the Commission a petition to surrender its exemption from licensing for the unconstructed Pinesdale Project No. 11836,[2] stating that the proposed project is no longer economically practicable.[3] The project would have been located in Ravalli County, Montana on the existing Pinesdale Pipeline, which draws water from Sheafman Creek, and was described as: An existing powerhouse on the 12-inch-diameter steel Pinesdale Pipeline with one new generating unit having an installed capacity of 150-kV.

Section 4.95(c) of the Commission's regulations states that if no construction has begun, an exemption will remain in effect through the thirtieth day after the Commission issues a public notice of receipt of the petition, unless the Commission issues an order to the contrary.[4] Accordingly, BMB Enterprises, Inc.'s surrender of its exemption from licensing will be effective at the close of business on September 21, 2011. If the Commission is closed on that day, then the surrender is effective at the close of business on the next day in which the Commission is open.[5] No applications for this site may be submitted until after the surrender is effective.

Dated: August 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21981 Filed 8–26–11; 8:45 am]

BILLING CODE 6717–01–P

---

[1] 18 CFR 4.95(a) (2011).

[2] The Commission issued a conduit exemption for Project No. 11836–000 on July 06, 2000. *BMB Enterprises, Inc.*, 92 FERC ¶ 62,008 (2000).

[3] *See* filing of August 5, 2011 by BMB Enterprises, Inc.

[4] 18 CFR 4.95(c) (2011).

[5] 18 CFR 385.2007(a)(2) (2011).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11651–001]

Calleguas Municipal Water District Notice of Surrender of Exemption (Conduit)

Pursuant to section 4.95(a) of the Commission's regulations,[1] Calleguas Municipal Water District filed with the Commission a petition to surrender its exemption from licensing for the unconstructed Las Posas Basin Aquifer Storage and Recovery Project No. 11651,[2] stating that the proposed project is no longer economically practicable.[3] The project would have been located near the Town of Moorpark in Ventura County, California.

Section 4.95(c) of the Commission's regulations states that if no construction has begun, an exemption will remain in effect through the thirtieth day after the Commission issues a public notice of receipt of the petition, unless the Commission issues an order to the contrary.[4] Accordingly, Calleguas Municipal Water District's surrender of its exemption from licensing will be effective at the close of business on September 22, 2011. If the Commission is closed on that day, then the surrender is effective at the close of business on the next day in which the Commission is open.[5] No applications for this site may be submitted until after the surrender is effective.

Dated: August 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–21983 Filed 8–26–11; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 4.95(a) (2011).

[2] The Commission issued a conduit exemption for Project No. 11651 on June 7, 1999. *Calleguas Municipal Water District,* 87 FERC ¶ 62,256 (1999).

[3] *See* filing of July 11, 2011 by Calleguas Municipal Water District.

[4] 18 CFR 4.95(c) (2011).

[5] 18 CFR 385.2007(a)(2) (2011).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0848; FRL–8881–4]

Notice of Intent To Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), announces a Notice of Intent to Suspend issued by EPA pursuant to section 3(c)(2)(B) of FIFRA. The Notice of Intent to Suspend was issued following the Agency's issuance of a Data Call-In notice (DCI), which required the registrant of the affected pesticide product containing a certain pesticide active ingredient to take appropriate steps to secure certain data, and following the registrant's failure to submit these data or to take other appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registration of the affected product. Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registration under section 3(c)(2)(B) of FIFRA.

DATES: The Notice of Intent to Suspend notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed Notice of Intent to Suspend or 30 days after the date of publication of this notice in the **Federal Register** (if the mailed Notice of Intent to Suspend is returned to the Administrator as undeliverable, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery to the registrant after making reasonable efforts to do so), unless during that time a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV. explains what must be done to avoid suspension under this notice (*i.e.,* how to request a hearing or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

FOR FURTHER INFORMATION CONTACT: Veronica Dutch, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8585; *e-mail address: Dutch.Veronica@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, 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–2010–0848. 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. Registrant Issued Notice of Intent To Suspend, Active Ingredient, Product Affected, and Date Issued

The Notice of Intent to Suspend was sent via the U.S. Postal Service (USPS) return receipt requested on July 19, 2011, to the registrant Drexel Chemical Company for the product Drexel Basic Kopper Sulfate, containing the active ingredient copper compounds, EPA Registration Number 19712–289.

III. Basis for Issuance of Notice of Intent To Suspend; Requirement List

The registrant failed to submit the required data or information or to take other appropriate steps to secure the required data for their pesticide product listed in Table 1 of this unit.

TABLE 1—LIST OF REQUIREMENTS

EPA Registration No.	Guideline No. as listed in applicable DCI	Requirement name	Date EPA issued DCI	Date registrant received DCI	Final data due date	Reason for notice of intent to suspend
19713–289	830.1550	Product identity and composition	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.1600	Description of materials used to produce the product.	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.1620	Description of production process	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.1650	Description of formulation process	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.1670	Discussion of formation of impurities	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.1700	Preliminary analysis	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.1750	Certified limits	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.1800	Enforcement analytical method	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.6302	Color	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.6303	Physical state	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.6304	Odor	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.6313	Stability to normal and elevated temperatures, metals, and metal ions.	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.6314	Oxidizing or reducing action	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.6315	Flammability	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.6316	Explodability	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.6317	Storage stability	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.6319	Miscibility	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.6320	Corrosion characteristics	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.6321	Dielectric breakdown voltage	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7000	pH	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7050	UV/Visible absorption	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7100	Viscosity	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7200	Melting point/melting range	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7220	Boiling point/Boiling range	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7300	Density/relative density	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7370	Dissociation constants in water	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7550	Partition coefficient (n-octanol/water) shake flask method.	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7570	Partition coefficient (n-octanol/water), estimation by liquid chromatography.	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7840	Water solubility: Column elution method, shake flask method.	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7860	Water solubility, generator column method	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	830.7950	Vapor pressure	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	870.1100	Acute oral toxicity	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	870.1200	Acute dermal toxicity	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	870.1300	Acute inhalation toxicity	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	870.2400	Acute eye irritation	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	870.2500	Acute dermal irritation	12/14/2007	12/24/2007	8/20/2008	No data received.
19713–289	870.2600	Skin sensitization	12/14/2007	12/24/2007	8/20/2008	No data received.

IV. How to avoid suspension under this notice?

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the Notice of Intent to Suspend by mail or, if you did not receive the notice that was sent to you via USPS first class mail return receipt requested, then within 30 days from the date of publication of this **Federal Register** notice (see **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA, however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product. A request for a hearing pursuant to this notice must:

- Include specific objections which pertain to the allowable issues which may be heard at the hearing.
- Identify the registrations for which a hearing is requested.
- Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to:

Hearing Clerk, 1900, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30-day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration by operation of law and, under such circumstances, the suspension of the registration for your affected product will be final and effective at the close of business on the applicable 30-day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30-day deadline period as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., the Agency determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) DCI notice. In order to avoid suspension under this option, you must satisfactorily comply with Table 1—List of Requirements in Unit III., for each product by submitting all required supporting data/information described in Table 1 of Unit III. and in the Explanatory Appendix (in the docket for this **Federal Register** notice) to the following address (preferably by certified mail):

Office of Pesticide Programs, Pesticide Re-evaluation Division, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001. For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30-day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product. The suspension of the registration of your company's product pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Table 1 of Unit II.

V. Status of Products That Become Suspended

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the basis of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this notice, including all supplemental registrants of the product listed in Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Unit II. Persons other than the registrant subject to this notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Unit II. Nothing in this notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Unit II. in any manner which would have been unlawful prior to the suspension.

If the registration for your product listed in Unit II. is currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) Data Call-In notice or Section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, *i.e.,* all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) Data Call-In notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

VI. What is the Agency's authority for taking this action?

The Agency's authority for taking this action is contained in sections 3(c)(2)(B) and 6(f)(2) of FIFRA, 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 19, 2011.

Mary Ko Manibusan,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–21990 Filed 8–26–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the

following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 28, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0506.

Title: Application for FM Broadcast Station License, Form 302–FM.

Form Number: FCC Form 302–FM.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 925 respondents; 925 responses.

Estimated Time per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 3,135 hours.

Total Annual Costs: $600,750.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: FCC Form 302–FM is required to be filed by licensees and permittees of FM broadcast stations to request and obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of these stations. Data is used by FCC staff to confirm that the station is built to the terms specified in the outstanding construction permit and to ensure that any changes made to the station will not have any impact on other stations and the public. Data is extracted from FCC Form 302–FM for inclusion in the license to operate the station.

Federal Communications Commission.

Avis Mitchell,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–21985 Filed 8–26–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 28, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0685.

Title: Updating Maximum Permitted Rates for Regulated Services and Equipment, FCC Form 1210; Annual Updating of Maximum Permitted Rates for Regulated Cable Services, FCC Form 1240.

Form Number: FCC Forms 1210 and 1240.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 3,400 respondents; 5,350 responses.

Estimated Time per Response: 1 hour to 15 hours.

Frequency of Response: Annual reporting requirement; Quarterly reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i) and 623 of the Communications Act of 1934, as amended.

Total Annual Burden: 44,800 hours.

Total Annual Cost: $2,034,375.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Cable operators use FCC Form 1210 to file for adjustments in maximum permitted rates for

regulated services to reflect external costs. Regulated cable operators submit this form to local franchising authorities or the Commission, in situations where the FCC has assumed jurisdiction. FCC Form is filed by cable operators quarterly.

FCC Form 1240 is filed by cable operators seeking to adjust maximum permitted rates for regulated cable services to reflect changes in external costs. Cable operators submit FCC Form 1240 to their respective local franchising authorities (''LFAs'') to justify rates for the basic service tier and related equipment or with the Commission, in situations where the Commission has assumed jurisdiction. FCC Form 1240 is a filing alternative to FCC Form 1210. FCC Form 1240 is filed by cable operators annually.

Federal Communications Commission.

Avis Mitchell,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–21986 Filed 8–26–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Formative Data Collections for Informing Policy Research.

OMB No.: 0970–0356.

Description: The Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), intends to request approval from the Office of Management and Budget (OMB) for a generic clearance that will allow OPRE to conduct a variety of qualitative data collections. Over the next three years, OPRE anticipates undertaking a variety of new research projects in the fields of cash welfare, employment and self-sufficiency, Head Start, child care, healthy marriage and responsible fatherhood, and child welfare. In order to inform the development of OPRE research, to maintain a research agenda that is rigorous and relevant, and to ensure that research products are as current as possible, OPRE will engage in a variety of qualitative data collections in concert with researchers and practitioners throughout the field. OPRE envisions using a variety of techniques including semi-structured discussions, focus groups, telephone interviews, and in-person observations and site visits, in order to integrate the perspectives of program operators, policy officials and members of the research community.

Following standard Office of Management and Budget (OMB) requirements, OPRE will submit a change request to OMB individually for every group of data collection activities undertaken under this generic clearance. OPRE will provide OMB with a copy of the individual instruments or questionnaires (if one is used), as well as other materials describing the project.

Respondents: Administrators or staff of State and local agencies or programs in the relevant fields; academic researchers; and policymakers at various levels of government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Semi-Structured Discussion and Information-Gathering Protocol	2400	1	.5	1200

Estimated Total Annual Burden Hours: 1200.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: August 22, 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011–21868 Filed 8–26–11; 8:45 am]

BILLING CODE 4184–22–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Pre-testing of Evaluation Surveys.

OMB No.: 0970–0355.

Description: The Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), intends to request approval from the Office of Management and Budget (OMB) for a generic clearance that a will allow OPRE to conduct a variety of data gathering activities aimed at identifying questionnaire and procedural problems in survey administration. Over the next three years, OPRE anticipates undertaking a variety of new surveys as part of research projects in the fields of cash welfare, employment and self-sufficiency, Head Start, child care, healthy marriage and responsible fatherhood, and child welfare, among others. In order to improve the development of its research and evaluation surveys, OPRE envisions using a variety of techniques including field tests, respondent debriefing questionnaires, cognitive interviews and focus groups in order to identify questionnaire and procedural problems, suggest solutions, and measure the relative effectiveness of alternative survey solutions.

Following standard OMB requirements, OPRE will submit a change request to OMB individually for every data collection activity undertaken under this generic clearance. OPRE will provide OMB with a copy of the individual instrument or questionnaire, as well as other materials describing the project and specific survey pretest.

Respondents: The respondents will be identified at the time that each change request is submitted to OMB. Generally they will be individuals who are representative of the target groups for the public assistance research or evaluation project in question.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Survey development field tests, respondent debriefing questionnaires, cognitive interviews and focus groups	6000	1	.5	3000

Estimated Total Annual Burden Hours: 3000.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: August 22, 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011–21863 Filed 8–26–11; 8:45 am]

BILLING CODE 4184–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0597]

Draft Guidance for Industry on Oversight of Clinical Investigations: A Risk-Based Approach to Monitoring; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Oversight of Clinical Investigations: A Risk-Based Approach to Monitoring.'' This guidance is intended to assist sponsors in developing risk-based monitoring strategies and plans for clinical investigations of human drugs, biologics, medical devices, and combinations thereof. The overarching goal of this guidance is to enhance human subject protection and the quality of clinical trial data. The guidance is intended to make clear that sponsors can use a variety of approaches to meet their monitoring responsibilities when conducting investigational new drug (IND) or investigational device exemption (IDE) studies.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 28, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448; or the Office of Communication, Education and Radiation Programs, Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ann Meeker-O'Connell, Center for Drug Evaluation and Research (HFD–45), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5339, Silver Spring, MD 20993–0002, 301–796–3150; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210; or Chrissy Cochran, Center for Devices and Radiological Health (HFZ–311), Food and Drug Administration, 10993 New Hampshire Ave., Bldg. 66, rm. 3453, Silver Spring, MD 20993–0002, 301–796–5490.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Oversight of Clinical Investigations: A Risk-Based Approach to Monitoring.'' FDA is publishing this new draft guidance to assist sponsors of clinical investigations in developing risk-based monitoring strategies and plans for clinical investigations of human drug and biological products, medical devices, and combinations thereof. This guidance is intended to make clear that sponsors can use a variety of approaches to meet their monitoring responsibilities during clinical investigations. This guidance describes a modern, risk-based approach to monitoring that focuses on critical study parameters and relies on a combination of monitoring activities to effectively oversee a study. For example, the guidance encourages greater use of centralized monitoring methods where appropriate. The guidance also makes recommendations about how to develop monitoring plans and document monitoring activities.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will

represent the Agency's current thinking on implementing a risk-based approach to the oversight of clinical investigations. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (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** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this draft guidance, FDA invites comments on the following 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 estimated 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 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.

Title: Draft Guidance for Industry: Oversight of Clinical Investigations: A Risk-Based Approach to Monitoring.

Description of Respondents: Respondents to this collection of information are sponsors that monitor clinical investigations.

Burden Estimate: The draft guidance is intended to assist sponsors of clinical investigations in developing risk-based monitoring strategies and plans for investigational studies of medical products, including human drug and biological products, medical devices, and combinations thereof. The guidance is intended to make clear that sponsors can use a variety of approaches to fulfill their responsibilities related to monitoring investigator conduct and the progress of IND or IDE studies. The guidance describes strategies for monitoring activities performed by a sponsor, or contract research organizations (CROs), that focus on the conduct, oversight, and reporting of findings of an investigation by clinical investigators. The guidance recommends strategies that reflect a risk-based approach to monitoring that focuses on critical study parameters and relies on a combination of monitoring activities to oversee a study effectively. The guidance specifically encourages greater reliance on centralized monitoring methods, where appropriate.

Sponsors are required to provide appropriate oversight of their clinical investigations to ensure adequate protection of the rights, welfare, and safety of human subjects and the quality and integrity of the resulting data submitted to FDA.[1] As part of this oversight, sponsors of clinical investigations are required to monitor the conduct and progress of their clinical investigations.[2] [3] The regulations are not specific about how sponsors are to conduct monitoring of clinical investigations and, therefore, are compatible with a range of approaches to monitoring. FDA currently has OMB approval for the information collection required under part 812 (OMB control number 0910–0078) and part 312, including certain provisions under subpart D (OMB control number 0910–0014).

However, the collections of information associated with this draft guidance that are not currently approved under OMB control numbers 0910–0014 or 0910–0078 are as follows:

Development of Comprehensive Monitoring Plan: Section IV.D of the draft guidance recommends that sponsors develop a prospective, detailed monitoring plan that describes the monitoring methods, responsibilities, and requirements for each clinical trial. The plan should provide those involved in monitoring with adequate information to effectively carry out their duties. All sponsor and CRO personnel who may be involved with monitoring, including those who review and/or determine appropriate action regarding potential issues identified through monitoring, should review the monitoring plan. The components of a monitoring plan are described in the draft guidance, including monitoring plan amendments (*i.e.,* the review and revision of monitoring plans and processes for timely updates). FDA understands that sponsors currently develop monitoring plans; however, not all monitoring plans contain all the elements described in the guidance. Therefore, our following burden estimate provides the additional time that a sponsor would expend in developing a comprehensive monitoring plan based on the recommendations in the guidance. We estimate that approximately 88 sponsors will develop approximately 132 comprehensive monitoring plans in accordance with the draft guidance, and that the added burden for each plan will be approximately 4 hours to develop, including the time needed for preparing monitoring plan amendments when appropriate (a total of 528 hours).

Voluntary Submission of Monitoring Plans to FDA: Section IV.D of the draft guidance permits sponsors to voluntarily and prospectively submit their monitoring plans to the appropriate CDER review division and request input from the division's clinical trial oversight component (sponsors of significant risk device studies are already required under § 812.25(e) to submit and maintain written procedures for monitoring). We estimate that approximately 22 sponsors will submit approximately 33 monitoring plans to CDER for feedback and that each submission will take approximately 2 hours to complete (a total of 66 hours).

FDA estimates the burden of this collection of information as follows:

[1] Part 312 (21 CFR part 312), subpart D, generally (Responsibilities of Sponsors and Investigators) and part 812 (21 CFR part 812), subpart C, generally (Responsibilities of Sponsors).

[2] Section 312.50 requires a sponsor to, among other things, ensure ''proper monitoring of the investigation(s)'' and ''that the investigations(s) is conducted in accordance with the general investigational plan and protocols contained in the IND.''

[3] Also see §§ 312.53(d), 312.56(a), 812.40, and 812.43(d).

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Draft guidance on monitoring clinical investigations	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Development of Comprehensive Monitoring Plan	88	1.5	132	4	528
Voluntary Submission of Monitoring Plans to FDA	22	1.5	33	2	66
Total	N/A	N/A	N/A	6	594

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm, http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm,* or *http://www.regulations.gov.*

Dated: August 23, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–21972 Filed 8–26–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Partner and Customer Satisfaction Surveys

SUMMARY: Under the provisions of Section 3507(a)(l)(D) of the Paperwork Reduction Act of 1995 for the opportunity for public comment on the proposed data collection projects, the Center for Scientific Review (CSR), National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 22, 2011 (Vol. 76, No. 141, p. 44020) and allowed 60-days for public comment. There was one public comment received during this time.

The purpose of this notice is to allow 30 days for public comment. The National Institutes of Health may not conduct or sponsor and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Extension of Generic Clearance for Voluntary Partner and Customer Satisfaction Surveys.

Type of Information Collection Request: Extension.

Need and Use of Information Collection: The information collected in these surveys will be used by the Center for Scientific Review management and personnel: (1) To assess the quality of the modified operations and processes now used by CSR to review grant applications; (2) To assess the quality of service provided by CSR to our customers; (3) To enable identification of the most promising biomedical research that will have the greatest impact on improving public health by using a peer review process that is fair unbiased from outside influence, timely, and (4) To develop new modes of operation based on customer need and customer feedback about the efficacy of implemented modifications. These surveys will almost certainly lead to quality improvement activities to enhance and/or streamline CSR's operations. The major mechanism by which CSR will request input is through surveys. The major initiatives ongoing at the present time include: Shortening the review and application process, shortening the grant application, recruiting the best reviewers by developing additional review modes, improving study section alignment to ensure the best reviews, and others. Surveys will be collected via Internet. Information gathered from these surveys will be presented to, and used directly by, CSR management to enhance the operations, processes, organization of, and services provided by the Center.

Frequency of Response: The participants will respond once, unless there is a compelling reason for a subsequent survey. *Affected public:* Universities, not-forprofit institutions, business or other forprofit, small businesses and organizations, and individuals. *Type of Respondents:* Adult scientific professionals.

ESTIMATES OF ANNUALIZED HOUR BURDEN

[Totals rounded off to the nearest hour]

Type of respondent	Number of respondents	Frequency of response	Average time per response (Hr)	Total annual hour burden
Adult scientific professionals (via Mail/Telephone/Internet)	5000	1	0.25	1250
Adult scientific professional (via focus groups)	75	1	1	188
Total	5075	.....	.....	1438

Requests for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the CSR, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond while maintaining their anonymity, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov,* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact George Chacko, PhD, Center for Scientific Review, NIH, Room 3030, 6701 Rockledge Drive, Bethesda, MD 20892–7776, or call non-toll-free number 301–435–1133 or E-mail your request, including your address to: *chackoge@csr.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of publication of this notice.

Dated: August 22, 2011.

George Chacko,

Director of Planning, Analysis, and Evaluation, CSR, National Institutes of Health.

[FR Doc. 2011–21980 Filed 8–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of 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 Child Health and Human Development Council.

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 intramural programs and projects and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the intramural programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council; NACHHD Subcommittee on Planning and Policy.

Date: September 6, 2011.

Closed: 9 a.m. to 10:30 a.m.

Agenda: To review and evaluate the Division of Intramural Research Laboratories site visit reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 31 2A03, Bethesda, MD 20892 (Telephone Conference Call).

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/nachhd.htm*, where an agenda and any additional information for the meeting will be posted when available.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21967 Filed 8–26–11; 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: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.

Date: October 4–5, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: M Catherine Bennett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Cellular, Molecular and Integrative Reproduction Study Section.

Date: October 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gary Hunnicutt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Oral, Dental and Craniofacial Sciences Study Section.

Date: October 4–5, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Yi-Hsin Liu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Pregnancy and Neonatology Study Section.

Date: October 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency—Baltimore, 300 Light Street, Baltimore, MD 21202.

Contact Person: Michael Knecht, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Sensorimotor Integration Study Section.

Date: October 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street, NW., Washington, DC 20037.

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Lung Cellular, Molecular, and Immunobiology Study Section.

Date: October 4–5, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ayres Hotel—Hawthorne/Manhattan Beach/Lax, 14400 Hindry Avenue, Hawthorne, CA 90250.

Contact Person: George M Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group, Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: October 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: David Balasundaram, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA Panel: Innovations in Molecular Probes.

Date: October 4, 2011.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: David L Williams, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21970 Filed 8–26–11; 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(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, 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.

Name of Committee: National Cancer Institute Board of Scientific Advisors; caBIG Oversight Ad hoc Subcommittee Teleconference Meeting.

Date: September 26, 2011.

Tiime: 3 p.m. to 5 p.m.

Agenda: New Business, caBIG Initiatives, and Oversight Interaction.

Place: National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8018, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: John Czajkowski, MPA, Deputy Director for Management, Office of the Director, National Cancer Institute, National Institutes of Health, 31 Center Drive, Rm. 11A48, Bethesda, MD 20892, 301–435–2455, *john.czajkowski@nih.gov.*

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.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa.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: August 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21973 Filed 8–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the National Advisory Eye 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: October 13, 2011.

Open: 8:30 a.m. to 12 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Contact Person: Andrew P. Mariani, PhD, Executive Secretary, National Advisory Eye Council, National Eye Institute, National Institutes of Health, 301–451–2020, *amp@nei.nih.gov.*

Any person interested 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.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov,* where an agenda and any additional information will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21974 Filed 8–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Clinical Trail Planning and Implementation Grants.

Date: September 28, 2011.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Clinical Trial Planning and Implementation Grants.

Date: September 30, 2011.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21976 Filed 8–26–11; 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: Endocrinology and Reproduction.

Date: September 19, 2011.

Time: 2 to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Behavioral Genetics and Epidemiology Study Section.

Date: September 27, 2011.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW, Washington, DC 20036.

Contact Person: Suzanne Ryan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative: Behavioral Genetics and Epidemiology.

Date: September 27, 2011.

Time: 2 to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Suzanne Ryan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Hepatobiliary Pathophysiology Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bonnie L Burgess-Beusse, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Cancer Biomarkers Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Los Angeles Century City, 2151 Avenue of the Stars, Los Angeles, CA 90067.

Contact Person: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–357–9318, *ngkl@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Clinical, Integrative and Molecular Gastroenterology Study Section.

Date: October 3, 2011.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chantal A Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, (301) 435–1243, *riveraca@mail.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group,

Skeletal Biology Development and Disease Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Priscilla B Chen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function B Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Arnold Revzin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Urologic and Kidney Development and Genitourinary Diseases Study Section.

Date: October 3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Ryan G Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neural Oxidative Metabolism and Death Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Baltimore, 300 Light Street, Baltimore, MD 21202.

Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Lung Injury, Repair, and Remodeling Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Anterior Eye Disease Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Jerry L Taylor, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Cellular Signaling and Regulatory Systems Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Elena Smirnova, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Membrane Biology and Protein Processing Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Janet M Larkin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Aging Systems and Geriatrics Study Section.

Date: October 3, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: James P Harwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Pathophysiological Basis of Mental Disorders and Addictions Study Section.

Date: October 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Adult Psychopathology and Disorders of Aging Study Section.

Date: October 3–4, 2011.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel. 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Mark D Lindner, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *lindnermd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: October 3–4, 2011.

Time: 11 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Donald L Schneider, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21963 Filed 8–26–11; 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 Workshop

Notice is hereby given of a Services Workshop convened by the Interagency Autism Coordinating Committee (IACC) Services Subcommittee.

The purpose of the IACC Services Workshop: ''Enhancing Supports for People with Autism and Their Families: Community Integration and the Changing Delivery System'' is to discuss in a public forum innovative and best practices that are being developed and implemented around the country to

address the services needs of people with autism and other disabilities and to help them integrate into their communities. Speakers include representatives of Federal, state, and local/private service agencies and providers. The information shared at this workshop will be used by the IACC in their planning for future updates to the IACC Strategic Plan for Autism Spectrum Disorder Research and to inform other activities of the committee. The workshop will be open to the public and accessible by live webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Services Workshop.

Date: September 15, 2011.

Time: 8:30 a.m. to 6 p.m. Eastern Time.

Agenda: To discuss in a public forum innovative and best practices that are being developed and implemented around the country to address the services needs of people with autism and other disabilities and to help them integrate into their communities.

Place: The Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Conference Call Access: Phone number: 888–390–1050, Access code: 1840636.

Webcast Live: http://videocast.nih.gov/.

Cost: The meeting is free and open to the public.

Registration: http://www.acclaroresearch.com/oarc/9-15-11/. 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.

Access: On-site parking available with validation.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8185a, Bethesda, MD 20892–9669, Phone: 301–443–6040, E-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note: This workshop will also be open to the public through a conference call. 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.

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered. Please note: Online pre-registration will close by 5 p.m. the day before the meeting. After that time, registration will have to be done onsite the day of the meeting.

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).

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

The schedule for the meeting is subject to change.

Dated: August 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21961 Filed 8–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research for Diabetes and Obesity.

Date: September 20, 2011.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Central Repositories Non-Renewable Sample Access (X01)-Hepatitis C and T1DGC.

Date: September 22, 2011.

Time: 2 to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Diabetes Research Centers (P30).

Date: November 9–10, 2011.

Time: 6 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Najma Begum, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21979 Filed 8–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel, NIBIB 2012 R25 Team Based Education.

Date: November 16, 2011.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov.*

Dated: August 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21978 Filed 8–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnership of Biodefense.

Date: September 27, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Frank S. De Silva, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–1009, *fdesilva@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnership for Biodefense.

Date: October 4, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Frank S. De Silva, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–1009, *fdesilva@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–21975 Filed 8–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–87]

Notice of Submission of Proposed Information Collection to OMB Section 8 Random Digit Dialing Fair Marketing Rent Surveys

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is evaluating alternative survey methodologies to collect gross rent data for specific areas in a relatively fast and accurate way that may be used to estimate and update Section 8 Fair Market Rents (FMRs) in areas where FMRs are believed to be incorrect and data from the American Community Survey is not available at the local level. Section 8(C)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate Program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify their use. Random digit dialing (RDD) telephone surveys have been used for many years to adjust FMRs and will be evaluated for continued use. These surveys are based on a sampling procedure that uses computers to select statistically random samples of telephone numbers to locate certain types of rental housing units for surveying. Cell phone surveys will be incorporated into this methodology and comprise roughly one-third of the sample. In addition HUD will collect survey data using web-based and mail systems. Initially, as the methodology is being refined, HUD will conduct surveys of up to 4 individual FMR areas in a year to test the accuracy of their FMRs. Up to 5 individual FMR area will be surveyed after the new methodology is determined.

DATES: *Comments Due:* September 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 (2528–0142) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *e-mail: OIRA_Submission@omb.eop.gov 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: Section 8 Random Digit Dialing Fair Marketing Rent Surveys.

OMB Approval Number: 2528–0142.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: HUD is evaluating alternative survey methodologies to collect gross rent data for specific areas in a relatively fast and accurate way that may be used to estimate and update Section 8 Fair Market Rents (FMRs) in areas where FMRs are believed to be incorrect and data from the American Community Survey is not available at the local level. Section 8(C)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate Program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify their use. Random digit dialing (RDD) telephone surveys have been used for many years to adjust FMRs and will be evaluated for continued use. These surveys are based on a sampling procedure that uses computers to select statistically random samples of telephone numbers to locate certain types of rental housing units for surveying. Cell phone surveys will be incorporated into this methodology and comprise roughly one-third of the sample. In addition HUD will collect survey data using web-based and mail systems. Initially, as the methodology is being refined, HUD will conduct surveys of up to 4 individual FMR areas in a year to test the accuracy of their FMRs. Up to 5 individual FMR areas will be surveyed after the new methodology is determined.

Frequency of Submission: On occasion .

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	8572	1		0.0702		602

Total Estimated Burden Hours: 602.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 23, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–22029 Filed 8–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5486–N–20]

Notice of Proposed Information Collection for Public Comment: United States Postal Service Vacancy Data User Verification Page

AGENCY: Office of the Policy Development and Research, 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:* October 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: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Dwight M. Jefferson, (202) 402–5932 for copies of the proposed forms and other available documents. (This is not a toll-free number.)

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: United States Postal Service Vacancy Data User Verification Page.

Description of the need for the information and proposed use: This request is for the clearance of a Web-based application that collects information from indivuals seeking to download from HUD for research purposes proprietary USPS data on vacant addresses in the United States. The purpose of the information collection is to verify that individuals requesting the USPS vacancy data represent government, academic, and non-profit research institutions—permitted sub-licensees under the HUD/USPS Inter-Agency Agreement—and are, therefore permitted to sub-license the data from HUD. Information that will be gathered consists of the name and email of the requestor, and the name, address, telephone number, the type of organization the requestor represents, and the nature of the

research for which the data will be used. The information collected will be stored in a database and will be used to create user IDs and passwords for authenticated users. This information collection will last as long as USPS allows HUD to sub-license its vacancy data to permitted third parties under the agreement.

OMB Approval Number: Pending.

Agency form numbers: None.

Members of Affected Public: It is estimated roughly 7,000 unique users will request access to the data through the Web site in the first year.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Less than 5 minutes per individual requestor.

Status of the proposed information collection: Pending OMB approval.

Authority: U.S. Code 12, 1701z–1, Research and demonstrations.

Dated: August 19, 2011.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy, Development and Research.

[FR Doc. 2011–22031 Filed 8–26–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO921000–L13200000–EL0000, COC–74911]

Notice of Invitation To Participate; Coal Exploration License Application COC–74911, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, and to Bureau of Land Management (BLM) regulations, all interested parties are hereby invited to participate with Oxbow Mining, LLC, on a pro rata cost-sharing basis, in a program for the exploration of coal deposits owned by the United States of America in lands located in Delta County, Colorado.

DATES: This notice of invitation was published in the *Delta County Independent* newspaper once each week for two consecutive weeks beginning the week of July 6, 2011, prior to publication the **Federal Register.** Any party electing to participate in this exploration program must send written notice to both the BLM and Oxbow Mining, LLC, as provided in the **ADDRESSES** section below no later than 30 days after publication of this notice in the **Federal Register** or 10 calendar days after the last publication of this notice in the *Delta County Independent* newspaper, whichever is later.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (case file number COC–74911): BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215; and BLM, Uncompahgre Field Office, 2465 S. Townsend Avenue, Montrose, Colorado 81401. The written notice should be sent to the following addresses: Oxbow Mining, LLC, Attn: Steve Weist, 3737 Hwy 133, Somerset, Colorado 81434 and BLM, Colorado State Office, Colorado State Director, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Kurt M. Barton at (303) 239–3714, *kbarton@blm.gov*; or Desty Dyer at (970) 240–5302, *ddyer@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose of the exploration program is to gain structural and quality information about the coal. The BLM regulations at 43 CFR 3410 require the publication of an invitation to participate in the coal exploration in the **Federal Register**. The Federal coal resources included in the exploration license application are located in the following described lands in Delta County, Colorado:

6th Principal Meridian

T. 13 S., R. 92 W.,
- Sec. 7, Lots 13–20 inclusive;
- Sec. 8, S½;
- Sec. 9, S½;
- Sec. 15, Lots 13, 18, 19, and 22;
- Sec. 16, All;
- Sec. 17, All;
- Sec. 18, All;
- Sec. 19, All;
- Sec. 20, All;
- Sec. 21, All;
- Sec. 22, Lots 4, 5, 12, and 13;
- Sec. 28, Lots 2–7 inclusive;
- Sec. 29, All; and
- Sec. 30, All.

T. 13 S., R. 93 W.,
- Sec. 9, Lots 9–16 inclusive;
- Sec. 10, Lots 9–16 inclusive;
- Sec. 11, Lots 9–16 inclusive;
- Sec. 12, Lots 9–16 inclusive;
- Sec. 13, All;
- Sec. 14, All;
- Sec. 15, Lots 1–10 inclusive, and lots 14–15 inclusive;
- Sec. 16, Lots 1–4 inclusive;
- Sec. 23, All;
- Sec. 24, All;
- Sec. 25, All;
- Sec. 26, All;
- Sec. 35, All; and
- Sec. 36, Lots 1–8 inclusive, and lots 11–14 inclusive.

Containing 14,044 acres, more or less.

The proposed exploration program is fully described in, and will be conducted pursuant to, an exploration plan to be approved by the BLM.

Authority: 43 CFR 3410.2–1(c)(1).

Helen M. Hankins,

State Director.

[FR Doc. 2011–21966 Filed 8–26–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 048728, LLCAD06000, L51010000.LVRWB09B2510.FX0000]

Notice of Intent To Prepare a Joint Environmental Impact Statement and Environmental Impact Report for the Proposed McCoy Solar Energy Project and Possible Land Use Plan Amendment, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Federal Land Policy and Management Act of 1976, as amended (FLPMA), and the California Environmental Quality Act, the Bureau of Land Management (BLM) Palm Springs/South Coast Field Office, Palm Springs, California, together with the County of Riverside, California, intend to prepare a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR), which may include an amendment to the California Desert Conservation Area (CDCA) Plan (1980 as amended), related to McCoy Solar, LLC's right-of-way (ROW) application for the McCoy Solar Energy Project (MSEP), a 750-megawatt (MW) photovoltaic (PV) solar electricity generation project. By this notice, the BLM and Riverside County are announcing the beginning of the scoping process to solicit public comments and identify issues related to the EIS/EIR.

DATES: This notice initiates the public scoping process for the EIS/EIR and

possible plan amendment. Comments on issues related to the EIS/EIR and possible plan amendment may be submitted in writing until September 28, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/cdd.html.* In order to be fully addressed in the Draft EIS/EIR, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS/EIR.

ADDRESSES: You may submit comments on issues and alternatives related to the MSEP EIS/EIR and possible plan amendment by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/cdd.html.*
- *E-mail: camccoysep@blm.gov.*
- *Fax:* (951) 697–5299.
- *Mail:* ATTN: Jeffery Childers, Project Manager, BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046.

Documents pertinent to this proposal may be examined at the BLM California Desert District Office.

FOR FURTHER INFORMATION CONTACT: Jeffery Childers; telephone (951) 697–5308; address BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046; e-mail *jchilders@blm.gov.* Also contact Mr. Childers to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant, McCoy Solar, LLC has requested a ROW authorization to construct, operate, maintain, and decommission an up to 750–MW PV solar facility and necessary ancillary facilities including a generation tie line, access road and switch yard with the ultimate generation capacity dependent on the technology selected and efficiencies available at the time of ROW authorization. The MSEP is proposed to be located on about 7,700 acres of public lands and 470 acres of private land under the land use authority of Riverside County. The facilities to be located on private land will be limited to solar arrays and inverters, as well as a portion of the access road, generation tie line, electric power distribution line, and a telecommunications line. The proposed 16-mile generation-tie line (gen-tie), with a right-of-way width of 100 feet, will require about 200 acres of public and private lands. The proposed 20-acre switch yard will be located adjacent to and connect into Southern California Edison's Colorado River Substation. The MSEP site is located approximately 13 miles northwest of the City of Blythe, California and approximately 32 miles east of Desert Center.

The BLM has segregated the public lands located within the MSEP application area from appropriation under the public land and mining laws, but not the mineral leasing or material sales acts, for a period of 2 years for the purpose of protecting potential sites for future solar energy development pursuant to 43 CFR 2091.3–1(e) and 43 CFR 2804.25(e) by notice in the **Federal Register** [76 FR 38416] on June 30, 2011.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the Draft EIS/EIR. At present, the BLM has identified the following preliminary issues: air quality and greenhouse gas emissions, biological resources including special status species, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, noise, recreation, traffic, visual resources, lands with wilderness characteristics, cumulative effects, and areas with high potential for renewable energy development.

Pursuant to the BLM's CDCA Plan, sites associated with power generation or transmission not identified in the CDCA Plan will be considered through the plan amendment process to determine the suitability of the site for renewable energy development. Since the proposed MSEP site was not previously identified as suitable, authorization of the MSEP would require amendment of the CDCA Plan. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to CDCA Plan predicated on the findings in the EIS/EIR. If a land use plan amendment is necessary, the BLM will integrate the land use planning process with the NEPA process for the MSEP. A preliminary list of the potential planning criteria that will be used to help guide and define the scope of the plan amendment process include:

1. The plan amendments will be completed in compliance with the FLPMA, NEPA, and all other relevant Federal laws, executive orders, and BLM policies;

2. Existing, valid plan decisions will not be changed and any new plan decisions will not conflict with existing plan decisions; and

3. The plan amendment(s) will recognize valid existing rights.

The BLM will use and coordinate the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) as provided for in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed MSEP and the potential CDCA Plan amendment will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA. The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13575 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the BLM's decision on the MSEP, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

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: 40 CFR 1501.7, 43 CFR 1610.2, 2091.3–1(e), and 2804.25(e).

Thomas Pogacnik,

Deputy State Director, California.

[FR Doc. 2011–21969 Filed 8–26–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCSE1001200]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on September 28, 2011.

DATES: Protests of the survey must be filed before September 28, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Realty Officer, Northwest Region, Bureau of Indian Affairs, Portland, Oregon, and was necessary to determine individual and tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 21 N., R. 20 W.

The plat, in five sheets, representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the subdivision of sections 2, 12, and 24, and the survey of a portion of the centerline of Old U.S. Highway 93, through section 2, a portion of the easterly right-of-way of present U.S. Highway 93, through section 12, a portion of the easterly right-of-way of Old U.S. Highway 93, through section 24, a portion of the easterly right-of-way of the Burlington Northern Railroad, through section 2, and certain tracts in sections 2, 12, and 24, Township 21 North, Range 20 West, Principal Meridian, Montana, was accepted August 16, 2011.

We will place a copy of the plat, in five sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in five sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in five sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–22040 Filed 8–26–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Public Meeting, Santa Rosa and San Jacinto Mountains National Monument Advisory Committee; CA

AGENCY: Bureau of Land Management, Interior; and Forest Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) and U.S. Department of Agriculture, Forest Service (Forest Service) Santa Rosa and San Jacinto Mountains National Monument Advisory Committee (MAC) will meet as indicated below.

DATES: September 19, 2011. The meeting will start at 3 p.m. and end at 6 p.m. with the public comment period beginning at 4 p.m. The meeting will be held at the County of Riverside Permit Assistance Center, Second Floor Conference Room, 38686 El Cerrito Road, Palm Desert, California.

FOR FURTHER INFORMATION CONTACT: Jim Foote, Monument Manager, Santa Rosa and San Jacinto Mountains National Monument, 1201 Bird Center Drive, Palm Springs, CA 92262, or telephone (760) 833–7136.

SUPPLEMENTARY INFORMATION: The MAC advises Secretary of the Interior and the Secretary of Agriculture, through the BLM and Forest Service, with respect to the preparation and implementation of a management plan for the National Monument. The meeting will focus on a variety of planning and management issues associated with the National Monument. All MAC meetings are open to the public. The public may present written comments to the MAC in advance of or at the meeting. Each formal MAC meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Monument Manager as provided above.

Dated: August 15, 2011.

John R. Kalish,

Field Manager, Palm Springs-South Coast Field Office, California Desert District, Bureau of Land Management.

Dated: August 15, 2011.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest, Forest Service.

[FR Doc. 2011–22037 Filed 8–26–11; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–799]

In the Matter of Certain Computer Forensic Devices and Products Containing the Same; Notice of Institution of Investigation, Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 22, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of MyKey Technology Inc. of Gaithersburg, Maryland. Supplements were filed on August 9 and 10, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain computer forensic devices and products containing the same by reason of infringement of certain claims of U.S. Patent No. 6,813,682 (''the '682 patent'');

U.S. Patent No. 7,159,086 (''the '086 patent''); and U.S. Patent No. 7,228,379 (''the '379 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established under subsection (a)(2) of section 337.

The complaint requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 23, 2011, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain computer forensic devices and products containing same that infringe one or more of claims 1–8, 11–13, 16–38, and 40–45 of the '682 patent; claims 1–9, 13–18, 20, and 21 of the '086 patent; claims 1 and 2 of the '379 patent, and whether an industry in the United States exists or is in the process of being established under subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: MyKey Technology Inc., 7851 C Beachcraft Avenue, Gaithersburg, MD 20879.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Data Protection Solutions by Arco, 3100 North 29th Court, Hollywood, FL 33020.

CRU Acquisitions Group LLC, 1000 SE Tech Center Dr., Suite 160, Vancouver, WA 68683.

CRU–DataPort LLC, 1000 SE Tech Center Dr., Suite 160, Vancouver, WA 68683.

Digital Intelligence, Inc., 17165 W. Glendale Drive, New Berlin, WI 53151.

Diskology, Inc., 9350 Eton Ave., Chatsworth, CA 91311.

Guidance Software, Inc., 215 N. Marengo Avenue, Suite 250, Pasadena, CA 91101.

Guidance Tableau LLC, 215 N. Marengo Avenue, Suite 250, Pasadena, CA 91101.

Ji2, Inc., 11235 Knott Ave., Suite C, Cypress, CA 90630.

MultiMedia Effects, Inc., 110 Riviera Dr., Unit 12, Markham, Ontario.

Voom Technologies, Inc., 110 Saint Croix Trail, S. Lakeland, MN 55043.

YEC Co. Ltd., 543–9 Tsuruma, Machida-shi, Tokyo 194–004, Japan.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 24, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–21960 Filed 8–26–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0071]

Agency Information Collection Activities: Proposed Reinstatement With Change of a Previously Approved Collection; Comments Requested: Extension With Change of a Previously Approved Collection; National Drug Threat Survey

ACTION: 60-Day Notice of information collection under review

The United States Department of Justice (DOJ), National Drug Intelligence Center (NDIC), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 28, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin M. Walker, General Counsel, National Drug Intelligence Center, Fifth Floor, 319 Washington Street, Johnstown, PA 15901.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension with Change of a Previously Approved Collection.

(2) *Title of the Form/Collection:* National Drug Threat Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NDIC Form # A–34l.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, State, Tribal, and Local law enforcement agencies. This survey is a critical component of the National Drug Threat Assessment and other reports and assessments produced by the National Drug Intelligence Center. It provides direct access to detailed drug threat data from state and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 3,000 respondents will complete a survey response within approximately 20 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,000 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 502, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–21955 Filed 8–26–11; 8:45 am]

BILLING CODE 4410–DC–P

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 22, 2011, a proposed Consent Decree in *United States* v. *Rexam Inc.,* Civil Action No. 3:11–cv–04836–JAP–DEA, was lodged with the United States District Court for the District of New Jersey.

The proposed Consent Decree will settle the United States' claims on behalf of the U.S. Environmental Protection Agency (''EPA'') against Defendant Rexam Inc. (''Rexam''), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, with respect to the Crown Vantage Landfill Superfund Site, in Alexandria Township, Hunterdon County, New Jersey (''Site''). The Site is on the National Priorities List established pursuant to Section 105(a) of CERCLA, 42 U.S.C. 9605(a). Pursuant to the Consent Decree, Rexam will pay $630,960 in reimbursement of response costs incurred by the United States on or before September 26, 2007, plus interest. In the proposed Consent Decree the United States reserves its right to seek reimbursement of Site-related response costs incurred after that date and certain response costs incurred before that date for work performed by the Agency for Toxic Substances Disease Registry on behalf of EPA.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments on the Consent Decree should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcommentees.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. *Rexam Inc.,* Civil Action No. 3:11–cv–04836–JAP–DEA, D.J. Ref. No. 90–11–3–09445/3.

During the public comment period, the proposed Consent Decree may be examined at the following Department of Justice Web site: *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 number (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy by mail from the Consent Decree Library, please enclose a check in the amount of $4.75 ($0.25 per page reproduction cost) payable to the U.S. Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the above-referenced address.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–21938 Filed 8–26–11; 8:45 am]

BILLING CODE 4410–15–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting and Hearing Notice No. 8–11]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Wednesday, September 7, 2011: 3 p.m.—Issuance of Proposed Decisions in claims against Libya

Thursday, September 8, 2011: 10 a.m.—Oral hearings on objections to Commission's Proposed Decisions in Claim No. LIB–II–173; 11 a.m.—Claim Nos. LIB–II–067, LIB–II–068, LIB–II–069, LIB–II–070, LIB–II–071, LIB–II–072 and LIB–II–073; 12 noon—LIB–I–051

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Judith H. Lock, Executive Officer, Foreign Claims Settlement Commission, 600 E Street,

NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Judith H. Lock,

Executive Officer.

[FR Doc. 2011–22140 Filed 8–25–11; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of Information for an Evaluation of the Implementation of Green Jobs and Health Care Training Grants; New Collection

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department or DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 (PRA) [44 U.S.C. 3505(c)(2)(A)]. The 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 the collection requirements on respondents can be properly assessed.

The proposed information collection is for an evaluation of the implementation of the Green Jobs and Health Care training grants. This evaluation is sponsored by ETA to understand the processes surrounding the design and implementation of these grants.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before October 28, 2011.

ADDRESSES: A copy of this proposed information collection request may be obtained by contacting Savi Swick at 202–693–3382 (this is not a toll-free number) or e-mail: *swick.savi@dol.gov.* Comments are to be submitted to Department of Labor/Employment and Training Administration, Attn: Savi Swick, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210. Written comments may be transmitted by facsimile to 202–693–2766 (this is not a toll-free number) or e-mailed to *swick.savi@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The proposed information collection is for an evaluation of the implementation of the Green Jobs and Health Care training grants. This evaluation is sponsored by ETA to understand the processes surrounding the design and implementation of four specific grant programs.

In February 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) into law in an effort to preserve and create jobs, promote economic growth, and assist those impacted by the recession. The Recovery Act included funding for four Solicitations for Grant Applications (SGAs) with the goal of training workers in the skills required to be employed in specific high-growth and emerging industries including health care, energy efficiency, and renewable energy. The four SGAs are:

- Energy Training Partnership ($100 million allocated across 25 projects)
- Pathways Out of Poverty ($150 million for 38 projects)
- State Energy Sector Partnership and Training ($190 million for 34 projects)
- Health Care and Other High Growth Emerging Industries ($225 million for 55 projects).

II. Review Focus

The Department 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 submission of responses.

III. Current Actions

This proposed information collection will involve: (1) Collecting data from recipients of four DOL/ETA grants that provide funding to train unemployed, underemployed, dislocated, and incumbent workers for employment and to create career pathways in health care and other growing industries; (2) conducting on-site in-depth interviews with grantees and their program partner staff; (3) conducting focus groups with grant participants; and (4) administering a web/telephone survey of all grant project directors and selected program partner staff.

Agency: Employment and Training Administration.

Type of Review: New Collection.

Title of Collection: The Evaluation of The Green Jobs and Health Care Training Grants Implementation.

OMB Control Number: 1205–0NEW.

Affected Public: Community-based organizations.

Estimated Number of Respondents: 2,252.

Frequency: Once at each type of collection (interviews, focus groups, survey).

Total Estimated Annual Responses: 2,252.

Estimated Average Time per Response: 31 minutes.

Estimated Total Annual Burden Hours: 1,186.

Total Estimated Annual Cost Burden (excluding hour costs): $0.

Data collection activity	Number of respondents	Total burden hours	Average hourly wage rate*	Total annualized cost
In-Depth Interviews:				
a. Grant Administrator	36	36	$44.84	$1,614
b. Education/Training Provider Partner	72	72	25.01	1,801
c. Workforce Partner	36	36	19.48	701
d. Employer/Union Partner	72	72	31.25	2,250
e. Support Services/Other Partner	44	44	19.48	857

Data collection activity	Number of respondents	Total burden hours	Average hourly wage rate*	Total annualized cost
Subtotal—Interviews	260	260		7,223
Focus Groups:				
a. Participant Information Sheet	360	90	16.00	1,440
b. Informed Consent	360	30	16.00	480
c. Discussion	360	540	16.00	8,640
Subtotal—Focus Groups	1,080	660		10,560
Grantee Surveys:				
a. Screening Calls	152	13	44.84	583
b. Web/Telephone Survey	760	253	28.01	7,087
Subtotal—Surveys	912	266		7,670
Total	2,252	1,186	n/a	25,453

Comments submitted in response to this notice will be summarized and may be included in the request for Office of Management and Budget approval of the final information collection request. The comments will become a matter of public record.

Dated: August 22, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–22002 Filed 8–26–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year (FY) 2012.

DATES: *Effective Date:* The annual list of labor surplus areas is effective October 1, 2011, for all states, the District of Columbia, and Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Samuel Wright, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. Telephone: (202) 693–2870 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, Subparts A and B. These regulations require the Employment and Training Administration (ETA) to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas.

Pursuant to those regulations, ETA is hereby publishing the annual list of labor surplus areas.

In addition, the regulations provide exceptional circumstance criteria for classifying labor surplus areas when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

Eligible Labor Surplus Areas

A Labor Surplus Area (LSA) is a civil jurisdiction that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states during the same 24-month reference period. Only official unemployment estimates provided to ETA by the Bureau of Labor Statistics are used in making these classifications. The average unemployment rate for all states includes data for the Commonwealth of Puerto Rico. The basic LSA classification criteria include a ''floor unemployment rate'' (6.0%) and a ''ceiling unemployment rate'' (10.0%).

Civil jurisdictions are defined as follows:

(a) A city of at least 25,000 population on the basis of the most recently available estimates from the Bureau of the Census; or

(b) A town or township in the States of Michigan, New Jersey, New York, or Pennsylvania of 25,000 or more population and which possess powers and functions similar to those of cities; or

(c) A county, except those counties which contain any type of civil jurisdictions defined in A or B above and a county in the States of Connecticut, Massachusetts, and Rhode Island; or

(d) A ''balance of county'' consisting of a county less any component cities and townships identified in paragraphs A or B above; or

(e) A county equivalent which is a town in the States of Connecticut, Massachusetts, and Rhode Island, or a municipio in the Commonwealth of Puerto Rico.

Procedures for Classifying Labor Surplus Areas

The Department of Labor (DOL) issues the labor surplus area list on a fiscal year basis. The list becomes effective each October 1 and remains in effect through the following September 30. The reference period used in preparing the current list was January 2009 through December 2010. The national average unemployment rate during this period was 9.5 percent. Twenty percent higher than the national unemployment rate is 11.4 percent. Since the ceiling unemployment rate is 10.0 percent, the qualifying rate is 10.0 percent. Therefore, areas included on the FY 2012 labor surplus area list had an average unemployment rate of 10.0 percent or above during the reference period. When a civil jurisdiction is part of a county and meets the unemployment qualifier as a labor surplus area, then the balance of county will be used if the balance of county also meets the unemployment criteria of a labor surplus area. The FY 2012 labor surplus area list and the list of labor surplus areas in Puerto Rico can be accessed at the ETA's LSA website at *http://www.doleta.gov/programs/lsa.cfm.*

Petition for Exceptional Circumstance Consideration

The classification procedures also provide for the designation of labor surplus areas under exceptional circumstance criteria. These procedures permit the regular classification criteria to be waived when an area experiences a significant increase in unemployment which is not temporary or seasonal and which was not reflected in the data for the 2-year reference period. Under the program's exceptional circumstance procedures, labor surplus area classifications can be made for civil jurisdictions, Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas, as defined by the Office of Management and Budget. In order for an area to be classified as a labor surplus area under the exceptional circumstance criteria, the state workforce agency must submit a petition requesting such classification to the Department of Labor's ETA. The current criteria for an exceptional circumstance classification are: an area's unemployment rate is at least 10.0 percent for each of the three most recent months; a projected unemployment rate of at least 10.0 percent for each of the next 12 months; and documentation that the exceptional circumstance event has already occurred. The state workforce agency may file petitions on behalf of civil jurisdictions, as well as Metropolitan Statistical Areas or Micropolitan Statistical Areas. The addresses of state workforce agencies are available on the ETA Web site at: *http://www.doleta.gov/programs/lsa.cfm.* State Workforce Agencies may submit petitions in electronic format to *wright.samuel.e@dol.gov,* or in hard copy to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210, Attention Samuel Wright. Data collection for the petition is approved under OMB 1205–0207, expiration date March 31, 2012.

Signed at Washington, DC, this 22nd day of August, 2011.

Jane Oates,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 2011–22003 Filed 8–26–11; 8:45 am]

BILLING CODE 4510–FT–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 28, 2011. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full

description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending:

1. Department of Agriculture, Center for Nutrition Policy and Promotion (N1–462–11–1, 1 item, 1 temporary item). Master files of an electronic information system used to facilitate the release of dietary and physical activity guideline information.

2. Department of the Army, Agency-wide (N1–AU–10–64, 1 item, 1 temporary item). Master files of an electronic information system used to maintain munitions expenditure records. The system includes mapping and surface data, range and maneuver information, and information on the types of munitions expended.

3. Department of the Army, Agency-wide (N1–AU–11–14, 1 item, 1 temporary item). Master files of an electronic information system used to manage the Army's financial and budget development process. Included are decision documents, command codes, and tables of allowance.

4. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–11–3, 2 items, 2 temporary items). Master files and hard copy outputs of law enforcement data relating to national marine fisheries cases, including incidents, fisheries, vessels, arrests, seized property, and evidence.

5. Department of Defense, Defense Finance and Accounting Service (N1–507–11–1, 455 items, 428 temporary items). Records relating to all aspects of the agency's mission, which includes paying service members, civilian employees, vendors, and contractors, providing business intelligence and finance and accounting information to Department of Defense (DOD) decision makers, and preparing annual financial statements for DOD. Proposed for permanent retention are high-level program planning and review records, war and mobilization plans, committee records, orders, management analyses summaries, mission policy and procedures files, organizational studies, publications, public affairs files, and legal opinions.

6. Department of Education (N1–441–11–1, 34 items, 32 temporary items). Department-wide grant administration and management files related to discretionary grants and grant competitions including cooperative agreements, research grants, and electronic information systems used to monitor and process grant data. Proposed for permanent retention are historically significant final grant products and reports to Congress.

7. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–11–2, 2 items, 2 temporary items). Draft accounts and draft applications in an electronic information system used for benefit applications that were initiated by a user but were not completed or submitted and automatic notifications sent to the account or application creator.

8. Department of Homeland Security, U.S. Secret Service (N1–87–11–4, 4 items, 3 temporary items). Records of division- and office-level strategic plans containing mission statements, goals, objectives and strategies. Included are the files and materials used to create the Agency Strategic Plan. Proposed for permanent retention are the Agency Strategic Plans.

9. Department of Justice, Bureau of Prisons (N1–129–09–33, 8 items, 8 temporary items). Agency-wide employee training course content and completion records.

10. Department of Justice, Federal Bureau of Investigation (N1–65–09–34, 5 items, 3 temporary items). Outputs and testing records of a Bureau-wide electronic information system used for continuity of operations planning. Proposed for permanent retention are master files and final reports.

11. Department of Justice, Federal Bureau of Investigation (N1–65–11–15, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to track legal projects in the Office of General Counsel.

12. Department of Justice, Federal Bureau of Investigation (N1–65–11–20, 1 item, 1 temporary item). Master files of an electronic information system used to link and analyze textual and structured data for investigations.

13. Department of Justice, Federal Bureau of Investigation (N1–65–11–21, 4 items, 4 temporary items). Master files, outputs, and related records of an electronic information system used to search across agency databases to aggregate information for investigative purposes.

14. Department of Justice, Justice Management Division (DAA–0060–2011–0006, 1 item, 1 temporary item). Master files of an electronic information system used to process printing orders and bill customers.

15. Department of State, Bureau of Diplomatic Security (N1–59–10–20, 8 items, 8 temporary items). Records of the Office of Diplomatic Courier Service, including non-operational policy and program records, newsletters, reference guides, and an electronic information system containing travel expense information and trip reports.

16. Department of State, Office of the Secretary (N1–59–10–3, 5 items, 2 temporary items). Records of the Front Office of the Coordinator for Reconstruction and Stabilization, including shared drive files which contain copies of records maintained in hard copy. Proposed for permanent retention are paper copies of the Coordinator's chronological files and daily calendar, as well as front office country files.

17. Department of the Treasury, Internal Revenue Service (N1–58–11–22. 1 item, 1 temporary item). Reduction in retention period for withholding compliance records.

18. National Archives and Records Administration, Office of Administration (N1–64–11–2, 9 items, 9 temporary items). Records relating to the safety and occupational health program, including inspections, incident reports, standards, and training.

19. Presidio Trust, Agency-wide (N1–556–11–1, 5 items, 3 temporary items). Records of Information and Public Image Management functions within the Trust, including correspondence files, policies and procedures, publications, publishing guidelines, press releases, speeches and interviews, special use permits, public meeting records, requests for information including Freedom of Information Act (FOIA) and Privacy Act related records, and information technology management records. Proposed for permanent retention are records that document policies concerning system development and public relations, along with high-level communications concerning the Trust's mission.

20. Presidio Trust, Agency-wide (N1–556–11–2, 5 items, 3 temporary items). Records of Interpretation and Educational functions within the Trust, including correspondence files, volunteer program records, lesson plans and curricula, planning documents, educational products, and wayside documentation. Proposed for permanent retention are records that document the planning, development, policies and procedures of interpretive and educational activities.

Dated: August 22, 2011.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2011–22041 Filed 8–26–11; 8:45 am]

BILLING CODE 7515–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Notice; Public Hearing; September 14, 2011

TIME AND DATE: 2 p.m., Wednesday, September 14, 2011.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 2 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 PM Friday, September 9, 2011. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 PM Friday, September 9, 2011. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the September 22, 2011 Board meeting will be posted on OPIC's web site on or about Thursday, September 1, 2011.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via e-mail at *connie.downs@opic.gov.*

Dated: August 25, 2011.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2011–22199 Filed 8–25–11; 4:15 pm]

BILLING CODE 33210–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATE AND TIME: Tuesday, September 13, 2011, at 10 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, September 13, at 10 a.m. (Closed)

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2011–22060 Filed 8–25–11; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on August 31, 2011 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

Item 1: The Commission will consider whether to issue a concept release and request public comment on a wide range of issues under the Investment Company Act raised by the use of derivatives by investment companies regulated under that Act.

Item 2: The Commission will consider whether to issue two related releases. The first release is an advance notice of proposed rulemaking to solicit public comment on possible amendments to Rule 3a–7 under the Investment Company Act, the rule that provides certain asset-backed issuers with a conditional exclusion from the definition of investment company. The second release is a concept release to solicit public comment on interpretive issues related to the status under the Investment Company Act of companies that are engaged in the business of acquiring mortgages and mortgage-related instruments.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: August 24, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–22069 Filed 8–25–11; 11:15 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one extension of an OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235,

Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

SSA submitted the information collection listed below to OMB for clearance. Your comments on the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To consider your comments, we must receive them no later than September 28, 2011. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

Medicare Part D Subsidies Regulations—20 CFR 418.3625, 418.3645, 418.3665(a), and 418.3670—0960–0702. The Medicare Prescription Drug Improvement and Modernization Act (MMA) of 2003 established the Medicare Part D program for voluntary prescription drug coverage of premium, deductible, and co-payment costs for certain low-income individuals. The MMA also mandated the provision of subsidies for those individuals who qualify for the program and who meet eligibility criteria for help with premium, deductible, or co-payment costs. This law requires SSA to make eligibility determinations and to provide a process for appealing SSA's determinations. Regulation sections 418.3625(c), 418.3645, 418.3665(a), and 418.3670 contain public reporting requirements pertaining to administrative review hearings. Respondents are applicants for the Medicare Part D subsidies who request an administrative review hearing.

Type of Request: Extension of an OMB-approved information collection.

Section	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
418.3625(c)	2,500	1	5	208
418.3645	10	1	20	3
418.3665(a)	1,000	1	5	83
418.3670	5	1	10	1
Total	3,515			295

Dated: August 24, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–21956 Filed 8–26–11; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a request for a new information collection, and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov.*

I. The Information Collection Below Is Pending at SSA

SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than October 28, 2011. Individuals can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

Screen Pop—20 CFR 401.45—0960–New. Section 205(a) of the Social Security Act (*Act)* requires SSA to verify the identity of individuals who request a record or information pertaining to themselves, and to establish procedures for disclosing personal information. SSA has established Screen Pop, an automated telephone process, to speed up verification for such individuals. Accessing Screen Pop, callers enter their Social Security number (SSN) using their telephone keypad or speech technology prior to speaking with a National 800 Number Network (N8NN) agent. The automated Screen Pop application collects the SSN and routes it to the ''Start New Call'' Customer Help and Information (CHIP) screen. Functionality for the Screen Pop application ends once the SSN connects to the CHIP screen and the SSN routes to the agent's screen. When the call connects to the SSA agent, the agent can use the SSN to access the caller's record as needed.

The respondents for this collection are individuals who contact SSA's N8NN to speak with an agent.

Type of Request: Request for a new information collection.

Number of Respondents: 34,000,000.

Frequency of Response: 1.

Average Burden per Response: 1 minute.

Estimated Annual Burden: 566,667 hours.

II. SSA Submitted the Information Collections Below to OMB for Clearance

Your comments regarding the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 28, 2011. Individuals can obtain copies of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. Application for Benefits Under a U.S. International Social Security Agreement—20 CFR 404.1925–0960–0448

Section 233(a) of the *Act* authorizes the President to broker international Social Security agreements (totalization agreements) between the United States

and foreign countries. SSA collects information using Form SSA–2490–BK to determine entitlement to Social Security benefits from the United States, or from a country that enters into a totalization agreement with the United States. The respondents are individuals applying for Old Age Survivors and Disability Insurance benefits from the United States or from a totalization agreement country.

Type of Request: Revision of an OMB-approved information collection.

Form No.	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA–2490–BK (MCS)	14,000	1	30	7,000
SSA–2490–BK (paper)	2,000	1	30	1,000
Totals	16,000			8,000

2. Plan for Achieving Self-Support (PASS)—20 CFR 416.110(e), 416.1180–1182, 416.1225–1227–0960–0559

The Supplemental Security Income (SSI) program encourages disability payment recipients to return to work. One of the program objectives is to provide incentives and opportunities that help recipients do this. The PASS provision allows individuals to use available income or resources (such as business equipment, education, or specialized training) to enter or re-enter the workforce and become self-supporting. In turn, SSA does not count the income or resources recipients use to fund a PASS when determining an individual's SSI eligibility or payment amount. An SSI recipient, who wants to use available income and resources to obtain education or training to become self-supporting, completes the SSA–545. SSA uses the information from the SSA–545 to evaluate the recipient's PASS, and to determine eligibility under the provisions of the SSI program.

The respondents are SSI recipients who are blind or disabled and want to develop a plan to work.

Note: This is a correction notice. SSA published this information collection as an extension on June 15, 2011 at 76 FR 35067. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 7,000.

Frequency of Response: 1.

Average Burden Per Response: 2 hours.

Estimated Annual Burden: 14,000 hours.

3. Authorization To Disclose Information to SSA—20 CFR 404.1512 and 416.912, 45 CFR 160 and 164–0960–0623

SSA must obtain sufficient evidence to make eligibility determinations for Title II and Title XVI payments. Therefore, the applicant must authorize the release of information from various sources to SSA. The applicant uses the SSA–827 to provide consent for the release of medical records, education records, and other information related to his or her ability to perform tasks. Once the applicant completes the SSA–827, SSA or the State Disability Determination Service sends the form to the designated source(s) to obtain pertinent records. The respondents are applicants for Title II benefits and Title XVI payments.

Type of Request: Revision of an OMB-approved information collection.

Note: This is a correction notice: SSA published incorrect burden information for this collection at 76 FR 23640, on April 27, 2011. We are correcting the error here.

Modaility	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA–827 with electronic signature (adult first person only)	2,530,000	1	9	379,500
SSA–827 with wet signature	1,591,551	1	10	265,258
Reading the Internet Instructions	708,100	1	3	35,405
Totals	4,829,651			680,163

Dated: August 24, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–22007 Filed 8–26–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7570]

30-Day Notice of Proposed Information Collection: Passport Demand Forecasting Study Phase III, OMB Number 1405–0177

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Passport Demand Forecasting Study Phase III.
- *OMB Control Number:* OMB Number 1405–0177.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Office of Passport Services CA/PPT.
- *Form Number:* SV2011–0010.

• *Respondents:* A national representative sample of all U.S. Citizens and U.S. Nationals, who are 16 years of age or older, that are eligible and entitled to a United States Passport product.

• *Estimated Number of Respondents:* 4,000 survey respondents per month.

• *Estimated Number of Responses:* 48,000 survey responses annually.

• *Average Hours per Response:* 10 minutes per survey.

• *Total Estimated Burden:* 8,000 hours annually.

• *Frequency:* Monthly.

• *Obligation to Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from August 29, 2011.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

• *E-mail:* *oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

• *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Edward M. Worthan, 2100 Pennsylvania Ave., NW., SA–29, Room 3004, Washington, DC 20037, who may be reached on 202–663–1073 or at *WorthanEM@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond.

Abstract of proposed collection:

The Intelligence Reform and Terrorism Prevention Act requires the Secretary of Homeland Security, in discussion with the Secretary of State, to develop and implement a plan to require U.S. Citizens and U.S. Nationals to present a passport and/or other sufficient documentation of identity and citizenship when entering the United States.

The plan to require U.S. Citizens and U.S. Nationals to present a passport has required the Office of Passport Services to obtain regular statistical data on issues that focus on, and are related to, travel and passport applications. This data will be used to monitor, assess, and forecast U.S. passport demand on a continuous basis. In support of these efforts, the Office of Passport Services will conduct monthly and incremental forecasts of national passport demand. This data will provide the ability for the Office of Passport Services to refine volume and timing estimates about passport demand, and will also provide the ability to gauge public reaction to economic and socio-demographic changes.

Methodology:

The Office of Passport Services will conduct monthly Passport Demand Forecasting Studies using multiple methodologies. Methodologies can include mail, Web/Internet, telephone, and mixed mode surveys to ensure that the Office of Passport Services reaches the appropriate audience and leverages the best research method to obtain valid responses. The survey data will cover an estimated 48,000 respondents annually and will include variables covering passport, travel, and socio-demographic variables of interest to the Office of Passport Services.

Dated: August 22, 2011.

Florence G. Fultz,

Deputy Assistant Secretary (Acting) Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2011–21994 Filed 8–26–11; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 7571]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Seductive Luxury and Innovation: The Furniture of Abraham and David Roentgen''

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, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Seductive Luxury and Innovation: The Furniture of Abraham and David Roentgen,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the presentation for the purposes of scientific research of the object at the Metropolitan Museum of Art, New York, NY, from on or about September 12, 2011, until on or about March 10, 2013, and the exhibition or display of the exhibit object at The Metropolitan Museum of Art, from on or about October 29, 2012, until on or about January 27, 2013, 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 object, 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: August 24, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–21993 Filed 8–26–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement (EIS), Ada County, ID

AGENCY: Federal Highway Administration, DOT.

ACTION: Rescind notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that the Notice of Intent (NOI) published on January 13, 2004, at 69 FR 2040, to prepare an Environmental Impact Statement (EIS) for a proposed highway project in Ada County, Idaho is being rescinded.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Hartman, Division Administrator, Federal Highway Administration, 3050 Lakeharbor Lane, Suite 126, Boise, ID 83703, *Telephone:* (208) 334–9180, ext. 116, or Mr. Wade Christiansen, District 3 Project Manager, Idaho Transportation

Department, District 3, P.O. Box 8028, Boise, ID 83714–8028, *Telephone:* (208) 334–8300, or Lisa Applebee, Three Cities River Crossing Project Manager, Ada County Highway District, 318 East 37th Street, Garden City, ID 83714, telephone (208) 387–6100.

SUPPLEMENTARY INFORMATION:

Background

The FHWA, in cooperation with Ada County Highway District (ACHD) and the Idaho Transportation Department (ITD), are rescinding the NOI to prepare an EIS that identifies an alignment for a transportation corridor that would connect State Highway 44/55 on the north with US 20/26 on the south. The proposed highway alternatives vary from approximately 1.5 to 3.0 miles in length and would provide four to six travel lanes. This alignment includes a new bridge across the Boise River. The study area is located in the northwestern part of the Boise Metropolitan Area, and borders or passes through portions of the cities of Boise, Eagle and Garden City as well as Ada County.

The NOI is being rescinded because the project scope has been changed and potential impacts from the new concept are not significant and do not warrant an EIS. Recommendations for improvements along this corridor are identified in the regional long-range transportation plan, ''Communities in Motion,'' prepared by the Boise-Nampa Metropolitan Planning Organization, Community Planning Association of Southwest Idaho (COMPASS) as revised and adopted by the COMPASS board in September 2010. The project was initiated with several concepts derived from previous planning efforts. Then a wide range of route options were initially developed for evaluation in the Corridor Preservation Study.

Public input, agency, and stakeholder coordination was conducted to solicit comments on the proposed action purpose and need, route options being considered and the alternative screening process. Public meetings were held on February 9, 2004, February 12, 2004, April 21, 2004 November 29, 2005, and December 1, 2005.

Six alternatives were advanced to the Draft EIS (DEIS) where more in-depth analysis was completed.

The DEIS was released for public review and comment on January 17, 2008. A Notice of Availability (NOA) was published in the **Federal Register** on January 18, 2008, at 73 FR 3464. A public hearing was held on February 13, 2008.

After the public hearing and comment period, ACHD reconsidered the Preferred Alternative on July 21, 2010, and recommended a No-Build Alternative for the project. The basis for this decision centered on consideration of environmental and transportation planning factors in combination with the technical comments received on the DEIS. In cooperation with the FHWA and ITD, the ACHD had determined that improvements to existing roadways utilizing operational improvements that include intelligent transportation systems (ITS) technology such as closed caption television cameras, speed detectors, and other hardware and software improvements would meet project goals without exceeding available revenue. This alternative is anticipated to have no adverse impact on the human and natural environment.

To ensure that the full range of issues related to this proposed action and all relevant issues are identified, comments and suggestions are invited from all interested parties regarding this action to rescind the NOI. Comments or questions concerning this proposed action should be directed to the ACHD at the addresses provided above. Comments must be received by September 28, 2011.

Issued on: August 23, 2011.

Ghassan G. Shanine,

Assistant Division Administrator, FHWA—Idaho Division.

[FR Doc. 2011–21968 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). These actions relate to a proposed highway project, the State Route (SR) 99 Alaskan Way Viaduct Replacement Project, in the State of Washington. These actions provide approval for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency action on the highway project will be barred unless the claim is filed on or before February 27, 2012. If the Federal law that authorizes judicial review of *a claim provides a time period of less than 180 days for filing such claim, then* that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Randy Everett, Major Project Oversight Manager, Federal Highway Administration, Jackson Federal Building, 915 2nd Avenue, Room 3142, Seattle, WA 98104; *telephone:* (206) 220–7538; and *e-mail: Randolph.Everett@.dot.gov.* The FHWA Washington Division's Oversight Manager's regular office hours are between 8 a.m. and 4:30 p.m. (Pacific Time). You may also contact Allison Hanson, ESO Mega Projects Director, WSDOT Alaskan Way Viaduct Office, 999 Third Ave., Ste. 2200, Seattle, WA 98104; *telephone:* (206) 805–2880; and *e-mail: HansonA@wsdot.wa.gov.* The AWV Project's regular office hours are between 8 a.m. and 5 p.m. (Pacific Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency action by issuing approval for the following highway project: to replace the Alaskan Way Viaduct between S. Royal Brougham Way and Roy Street because it is seismically vulnerable and at the end of its useful life.

The four main components of the bored tunnel alternative include:

- Replacement of SR 99 between S. Royal Brougham Way and Roy Street with two lanes in each direction.
- Full northbound and southbound access to and from SR 99 via ramp connections at the tunnels' south portal north of S. Royal Brougham Way and the tunnels' north portal near Harrison and Republican Streets.
- Demolition of the existing viaduct along the Seattle waterfront.
- Decommissioning of the Battery Street Tunnel.

The action by the FHWA on this project, and the laws under which such action was taken, are described in the March 2004 Draft Environmental Impact Statement (DEIS), the July 2006 Supplemental Draft EIS, the October 2010 Supplemental Draft EIS, July 2011 Final Environmental Impact Statement (Final EIS), August 2011 Record of Decision (ROD), and in other documents in the FHWA administrative record for the project. The Draft EIS, both Supplemental EIS's, Final EIS, ROD and other supporting documents in the FHWA administrative record are available by contacting the FHWA or the Washington State Department of Transportation at the addresses provided above. The Draft EIS, both Supplemental EIS's, Final EIS and ROD can be viewed and downloaded from

the project Web site at *http://www.alaskanwayviaduct.org* or viewed at several libraries as well as local neighborhood service centers in the project area. A complete list of the library branches and local neighborhood service centers is included in the Final EIS.

This notice applies to all Federal agency decisions on the project as of the issuance date of this notice and all laws, as amended under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4347]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303].
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Section 7 of the Endangered Species Act [16 U.S.C. 1536]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(e)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470 f].
6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996].
7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 319); Land and Water Conservation Fund [16 U.S.C. 460l–4–460l–114]; Safe Drinking Water Act [42 U.S.C. 300f–300j–6].
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: August 22, 2011.

Daniel M. Mathis,

Division Administrator, Olympia, Washington.

[FR Doc. 2011–21965 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee Public Subcommittee Meeting; Amendment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; amendment.

SUMMARY: This notice amends FMCSA's August 10, 2011, notice announcing meetings of the Agency's Motor Carrier Safety Advisory Committee (MCSAC) from August 29–31, 2011. The time for the session on Tuesday, August 30 was listed incorrectly in the notice. The meeting on Tuesday, August 30, 2011, will begin at 8:30 a.m. (E.S.T.) and will conclude at 5 p.m., with the last hour reserved for public comment. All other information contained in the notice remains valid.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, (202) 385–2395, *mcsac@dot.gov.*

TIMES AND DATES: The meeting will be held Monday–Wednesday, August 29–31, 2011, from 8:30 a.m. to 5 p.m. (E.S.T.) at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314, in the Washington and Jefferson Rooms on the 2nd floor.

SUPPLEMENTARY INFORMATION: The FMCSA's August 10, 2011, notice (76 FR 49527) indicated that the Agency's MCSAC would meet August 29–31, 2011, at the Hilton Alexandria Old Town. The notice indicated the Tuesday, August 30, 2011, meeting would be held from 8:30 a.m. to 1 p.m. (E.S.T.). The actual time of the meeting on that date is 8:30 a.m. to 5 p.m. (E.S.T.).

Issued on: August 23, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–22049 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0145]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-two individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective August 29, 2011. The exemptions expire on August 29, 2013.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) 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.*

Background

On July 8, 2011, FMCSA published a notice of receipt of Federal diabetes

exemption applications from twenty-two individuals and requested comments from the public (76 FR 40439). The public comment period closed on August 8, 2011, and no comments were received.

FMCSA has evaluated the eligibility of the twenty-two applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century''. The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible.

The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-two applicants have had ITDM over a range of 1 to 27 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the July 8, 2011, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the twenty-two exemption applications, FMCSA exempts Bryan K. Aaron, Michael A. Anderson, Donald M. Bergman, Ronald J. Boehm, Ernest E. Bogan, Eric B. Bratanich, Jerry A. Campbell, Paul Dessesow, Vernon W. Elmore, Michael J. Gilbert, William D. Hanam, Steven S. Hanna, Michael M. Harms, Johnathan R. Hartman, Devon K. Johnson, Andrew W. Richey, Rob T. Romans, Thomas M. Shafer, Allen D. Stevenson, Oleg Tarasov, Richard H. Willis, and Harvey N. Woody from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: August 19, 2011.

Larry W. Minor,

Associate Administrator Office of Policy.

[FR Doc. 2011–22047 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–20560; FMCSA–2007–26653; FMCSA–2007–27897; FMCSA–2009–0154]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 28 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not

compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 22, 2011. Comments must be received on or before September 28, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2005–20560; FMCSA–2007–26653; FMCSA–2007–27897; FMCSA–2009–0154, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS 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.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 28 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 28 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Michael K. Adams, Mark R. Anderson, Darrell W. Bayless, Keith A. Bliss, Lloyd D. Burgess, Gary R. Butler, Ronald L. Cote, Shennan E. Dorsey, Cecil A. Evey, Kamal A. Gaddah, Bradley O. Hart, John M. Homchick, Terry L. Hudgens, Eric M. Kousgaard, Larry L. Massey, James F. McMahon, Jr., John T. McWilliams, Samuel A. Miller, Angelo D. Rogers, Larry T. Rogers, Ricky J. Sanderson, Marcial Soto-Rivas, Boyd D. Stamey, Harry J. Stoever, Jr., David C. Sybesma, Bruce E. Thulin, Matthew K. Tucker, Victor H. Vera.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 28 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (70 FR 17504; 70 FR 30997; 72 FR 8417; 72 FR 36099; 72 FR 40362; 72 FR 52419; 72 FR 39879; 74 FR 34394; 74 FR 37295; 74 FR 41971; 74 FR 48343). Each of these 28 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that

interested parties with specific data concerning the safety records of these drivers submit comments by September 28, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 28 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: August 18, 2011.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2011–22052 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0141]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 9 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective August 29, 2011. The exemptions expire on August 29, 2013.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS 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.*

Background

On July 8, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 40445). That notice listed 9 applicants' case histories. The 9 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 9 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 9 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including a macular hole, optic atrophy, amblyopia, prosthesis and complete loss of vision. In most cases, their eye conditions were not recently developed. Six of the applicants were either born with their vision impairments or have had them since childhood. The 3 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 13 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to

evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 9 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3to 35 years. In the past 3 years, one of the drivers was involved in a crash and one was convicted of a moving violation in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the July 8, 2011, notice (76 FR 40445).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' *Journal of the American Statistical Association,* June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 9 applicants, one of the applicants was involved in a crash and one of the applicants was convicted of a moving violation in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 9 applicants listed in the notice of July 8, 2011 (76 FR 40445).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 9 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized

Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 9 exemption applications, FMCSA exempts Joe M. Flores, Matthew K. Hagge, James O. Howard, Ramon Melendez, Matthew D. Nelson, Jesse A. Nosbush, Richard E. Purvenas, Jr., Wilfred E. Sweatt, and Thomas L. Swatley from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: August 19, 2011.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2011–22050 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2011–0052]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: 49 U.S.C. Section 5316—Job Access and Reverse Commute Program.

DATES: Comments must be submitted before October 28, 2011.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: http://www.regulations.gov*. Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**NOTE:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *http://www.regulations.gov*. Commenters should follow the directions below for mailed and hand-delivered comments.
2. *Fax:* 202–493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *http://www.regulations.gov*. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *http://www.regulations.gov*. Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert Williams, FTA Office of Program Management (202) 366–0797, or e-mail: *Gilbert.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5316—Job Access and Reverse Commute Program (*OMB Number: 2132–0563*)

Background: 49 U.S.C. 5316, the Job Access and Reverse Commute (JARC) Program, authorizes the Secretary of Transportation to make grants to states for areas with a population of less than 200,000 and designated recipients in urbanized areas of 200,000 persons or greater to transport welfare recipients and other low-income individuals to and from jobs and activities related to employment. Grant recipients are required to make information available to the public and to publish a program of projects which identifies the subrecipients and projects for which the State or designated recipient is applying for financial assistance. FTA uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. FTA collects performance information annually from designated recipients in rural areas, small urbanized areas, other direct recipients for small urbanized areas, and designated recipients in urbanized areas of 200,000 persons or greater. FTA collects milestone and financial status reports from designated recipients in large urbanized areas on a quarterly basis. The information submitted ensures FTA's compliance with applicable federal laws.

Respondents: State and local government, private non-profit organizations and public transportation authorities.

Estimated Annual Burden on Respondents: 251 hours for each of the 206 respondents.

Estimated Total Annual Burden: 122,374 hours.

Frequency: Annual.

Issued: August 23, 2011.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2011–21999 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2011–0051]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection:

49 U.S.C. Section 5330—Rail Fixed Guideway Systems, State Safety Oversight.

DATES: Comments must be submitted before October 28, 2011.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: http://http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *http://www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–493–2251.

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

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *http://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *http://www.regulations.gov.*

Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Levern McElveen, Safety Team Leader, Office of Safety and Security, (202) 366–1651, or *e-mail: Levern.McElveen@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5330—Rail Fixed Guideway Systems, State Safety Oversight (*OMB Number: 2132–0558*)

Background: 49 U.S.C. Section 5330 requires States to designate a State Safety Oversight (SSO) agency to oversee the safety and security of each rail transit agency within the State's jurisdiction. To comply with Section 5330, SSO agencies must develop program standards which meet FTA's minimum requirements. In the Program Standard, which must be approved by FTA, each SSO agency must require each rail transit agency in the State's jurisdiction to prepare and implement a System Safety Program Plan (SSPP) and System Security Plan (SSP). The SSO agency also requires the rail transit agencies in its jurisdiction to conduct specific activities, such as accident investigation, implementation of a hazard management program, and the management of an internal safety and security audit process. SSO agencies review and approve the SSPPs and SSPs of the rail transit agencies. Once every three years, States conduct an on-site review of the rail transit agencies in their jurisdictions to assess SSPP/SSP implementation and to determine whether these plans are effective and if they need to be updated. SSO agencies develop final reports documenting the findings from these on-site reviews and require corrective actions. SSO agencies also review and approve accident investigation reports, participate in the rail transit agency's hazard management program, and oversee implementation of the rail transit agency's internal safety and security audit process. SSO agencies review and approve corrective action plans and track and monitor rail transit agency activities to implement them.

Collection of this information enables each SSO agency to monitor each rail transit agency's implementation of the State's requirements as specified in the Program Standard approved by FTA. Without this information, States would not be able to oversee the rail transit agencies in their jurisdictions. Recommendations from the National Transportation Safety Board (NTSB) and the Government Accountability Office (GAO) have encouraged States and rail transit agencies to devote additional resources to these safety activities and safety oversight in general.

SSO agencies also submit an annual certification to FTA that the State is in compliance with Section 5330 and an annual report documenting the State's safety and security oversight activities. FTA uses the annual information submitted by the States to monitor implementation of the program. If a State fails to comply with Section 5330, FTA may withhold up to five percent of the funds appropriated for use in a State or urbanized area in the State under section 5307. The information submitted by the States ensures FTA's compliance with applicable federal laws, OMB Circular A–102, and 49 CFR part 18, ''Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments.''

Respondents: State and local government agencies.

Estimated Annual Burden on Respondents: Annually, each designated SSO agency devotes approximately 767 hours to information collection activities for each of the rail transit agencies in the State's jurisdiction. Combined, the SSO agencies spend approximately 33,770 hours on information collection activities each year, or roughly half of the total level of effort devoted to implement Section 5330 requirements in a given year. The

local governments affected by Section 5330, including the rail transit agencies, spend an annual total of 108,623 hours on information collection activities to support implementation of Section 5330, or approximately 2,469 hours each. This amount also equals approximately half of the total level of effort devoted to implement Section 5330 requirements in a given year.

Estimated Total Annual Burden: 142,393 hours.

Frequency: Annual.

Issued: August 23, 2011.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2011–22008 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2011–0049]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collection:

Reporting of Technical Activities by FTA Grant Recipients

The information collected is used to report annually to Congress, the Secretary of Transportation and to the Federal Transit Administrator on how grantees are responding to national emphasis areas and congressional direction. The **Federal Register** notice with a 60-day comment period soliciting comments was published on June 17, 2011 (Citation 76 FR 35507). No comments were received from that notice.

DATES: Comments must be submitted before September 28, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Reporting of Technical Activities by FTA Grant Recipients.

Abstract: 49 U.S.C. 5305 authorizes the use of federal funds to assist metropolitan planning organizations (MPOs), states, and local public bodies in developing transportation plans and programs to serve future transportation needs of urbanized areas and nonurbanized areas throughout the nation. As part of this effort, MPOs and states are required to consider a wide range of goals and objectives and to analyze alternative transportation system management and investment strategies. These objectives are measured by definable activities such as planning certification reviews and other related activities.

The information collected is used to report annually to Congress, the Secretary, and to the Federal Transit Administrator on how grantees are responding to national emphasis areas and congressional direction, and allows FTA to track grantees' use of Federal planning funds.

Estimated Total Annual Burden: 156 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: August 23, 2011.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2011–22014 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2011–0050]

Notice of Request for the Approval of a New Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection:

49 U.S.C. Section 5320—Paul S. Sarbanes Transit in Parks Program

DATES: Comments must be submitted before October 28, 2011.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *http://www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–493–2251.

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

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *http://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *http://www.regulations.gov.*

Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building,

Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Schildge, FTA Office of Program Management, (202) 366–0778 or *e-mail: adam.schildge@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of these information collections, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5320—Paul S. Sarbanes Transit in Parks Program (*OMB Number: 2132–New*)

Background: Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), as amended, established the Paul S. Sarbanes Transit in Parks Program (Transit in Parks Program—49 U.S.C. 5320). The program is administered by FTA in partnership with the Department of the Interior (DOI) and the U.S. Department of Agriculture's Forest Service. The program provides grants to Federal land management agencies that manage an eligible area, including but not limited to the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, the Bureau of Reclamation; and State, tribal and local governments with jurisdiction over land in the vicinity of an eligible area, acting with the consent of a Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or non-governmental participant. The purpose of the program is to provide for the planning and capital costs of alternative transportation systems that will enhance the protection of national parks and Federal lands; increase the enjoyment of visitors' experience by conserving natural, historical, and cultural resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experience; and ensure access to all, including persons with disabilities.

Respondents: Federal land management agencies that manage an eligible area, including but not limited to the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, the Bureau of Reclamation; and State, tribal and local governments.

Estimated Annual Burden on Respondents: Approximately 12.2 hours for each of the 100 respondents.

Estimated Total Annual Burden: 1,220 hours.

Frequency: Annual.

Issued: August 23, 2011.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. 2011–22025 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0040; Notice 1]

Forest River, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Forest River, Inc. (Forest River),[1] has determined that approximately 2,741 model years 2009–2011 R–Pod travel trailers that it manufactured from October 27, 2008 through November 30, 2010, fail to meet the requirements of paragraph S5.1.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Forest River has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, dated December 14, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Forest River has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Forest River's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Forest River estimates that a total of approximately 2,741 model year 2009–2011 R–Pod model travel trailers are affected, of which 2,697 were manufactured in Forest River's Surveyor Division plant in Goshen, Indiana and 44 were manufactured in its Surveyor Division plant in Dallas, Oregon.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 2,741 [2] vehicles that have already passed from the manufacturer to an owner, purchaser, or dealer.

Paragraph S5.1.1 of FMVSS No. 108 requires in pertinent part:

> S5.1 Required motor vehicle lighting equipment.
>
> S5.1.1 Except as provided in succeeding paragraphs of this S5.1.1, each vehicle shall be equipped with at least the number of lamps, reflective devices, and associated equipment specified in Tables I and III and S7, as applicable. Required equipment shall be designed to conform to the SAE Standards or Recommended Practices referenced in those tables. Table I applies to multipurpose passenger vehicles, trucks, trailers, and buses, 80 or more inches in overall width. Table III applies to passenger cars and motorcycles and to multipurpose passenger vehicles, trucks, trailers, and buses, less than 80 inches in overall width * * *

[1] Forest River, Inc., is a manufacturer of motor vehicles and is organized under the laws of the state of Indiana.

[2] Forest River's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Forest River as a vehicle manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the 2,741 affected vehicles. However, the agency cannot relieve Forest River distributors of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Forest River recognized that the subject noncompliance existed. Those vehicles must be brought into conformance, exported, or destroyed.

TABLE I—REQUIRED MOTOR VEHICLE LIGHTING EQUIPMENT OTHER THAN HEADLAMPS

[Multipurpose passenger vehicles, trucks, trailers, and buses, of 80 or more inches overall width]

Item	Multipurpose passenger vehicles, trucks, and buses	Trailers	Applicable SAE standard or recommended practice (See S5 for subreferenced SAE materials)
Taillamps	2 red	2 red	J585e, September 1977.
Stoplamps	2 red	2 red	SAE J1398, May 1985.
License plate lamp	1 white	1 white	J587 October 1981.
Reflex reflectors	4 red; 2 amber	4 red; 2 amber	J594f, January 1977.
Side marker lamps	2 red; 2 amber	2 red; 2 amber	J592e, July 1972.
Backup lamp	1 white	None	J593c, February 1968.
Turn signal lamps	2 red or amber; 2 amber	2 red or amber	SAE J1395, April 1985.
Turn signal operating unit	1	None	J589, April 1964.
Turn signal flasher	1	None	J590b, October 1965.
Vehicular hazard warning signal operating unit	1	None	J910, January 1966.
Vehicular hazard warning signal flasher	1	None	J945, February 1966.
Identification lamps	3 amber; 3 red	3 red	J592e, July 1972.
Clearance lamps	2 amber; 2 red	2 amber, 2 red	J592e, July 1972.
Intermediate side marker lamps	2 amber	2 amber	J592e, July 1972.
Intermediate side reflex reflectors	2 amber	2 amber	J594f, January 1977.
Conspicuity	See S5.7	See S5.7	See S5.7

Note: (1) The term overall width refers to the nominal design dimension of the widest part of the vehicle, exclusive of signal lamps, marker lamps, outside rearview mirrors, flexible fender extensions, and mud flaps, determine with doors and windows closed, and the wheels in the straight-ahead position.

This supersedes the interpretation of the term ''overall width'' appearing in the **Federal Register** of March 1, 1967 (32 FR 3390).

Forest River described the noncompliances as the absence of the clearance lamps and marker lamps required by paragraph S5.1.1 of FMVSS No. 108.

Forest River explained that its original interpretation of the requirements of FMVSS No. 108 caused it to believe that because the bodies of the subject trailers, not including the fenders, are less than 80 inches in width that clearance lamps and marker lamps were not required.

Forest River further explained that based on a consumer complaint NHTSA's Office of Vehicle Safety Compliance (OVSC) inspected a number of the subject vehicles and found that based on the width of the vehicles, including the fenders, that clearance lamps and marker lamps were required on the vehicles due to the requirements of paragraph S5.1.1, Table 1 of FMVSS No. 108.

In its petition Forest River argues that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The cost of correcting the noncompliance is substantial.

(2) Installation of clearance lamps and marker lamps on fully assembled vehicle has the potential of causing deterioration of the vehicles if the remedy is not completed correctly.

(3) ''The box of the unit [subject vehicle] is under the 80 inch width and is properly marked according to Table IV of [49 CFR] 571.108. The fenders are low on each side of the unit.''

Forest River additionally states that it has corrected the subject noncompliances so that future production of its R–Pod travel trailer will conform with all applicable requirements of FMVSS No. 108.

Supported by the above stated reasons, Forest River believes that the described FMVSS No. 108 noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied,

notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 28, 2011.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8).

Issued on: August 22, 2011.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2011–21953 Filed 8–26–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 519 (Sub-No. 4)]

Notice of National Grain Car Council Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of National Grain Car Council meeting.

SUMMARY: Notice is hereby given of a meeting of the National Grain Car Council (NGCC), pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2).

DATES: The meeting will be held on Tuesday, September 13, 2011, beginning at 1 p.m. (CDT) and is expected to conclude at 5 p.m. (CDT).

ADDRESSES: The meeting will be held at the Intercontinental Hotel, Kansas City, 401 Ward Parkway, Kansas City, MO 64112. Phone 816–756–1500. Fax 816–756–1635.

FOR FURTHER INFORMATION CONTACT: Thomas Brugman at (202) 245–0281. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: The NGCC arose from a proceeding instituted by the Surface Transportation Board's predecessor agency, the Interstate Commerce Commission (ICC), in *National Grain Car Supply—Conference of Interested Parties,* EP 519. The NGCC was formed as a working group to facilitate private-sector solutions and recommendations to the ICC (and now the Board) on matters affecting grain transportation.

The general purpose of this meeting is to discuss rail carrier preparedness to transport the 2011 fall grain harvest. The meeting will be opened by Board Chairman Daniel R. Elliott III and Vice-Chairman Ann D. Begeman (who, together with Tim McNulty, Director of Marketing at CSX, serves as Co-Chairman for the NGCC). Agenda items will then include: reports by rail carriers and shippers on grain-service related issues; a report by rail car manufacturers and lessors on current and future availability of various grain-car types; a presentation and discussion regarding the history and past efforts of the National Grain Car Council; discussion of the NGCC's 1998 ''Statement of Principles'' concerning the availability of public information regarding the status, availability and performance of the grain car fleet; a presentation and explanation, by NGCC's White Paper subcommittee, of the White Paper concerning the effect on the U.S. grain market of various aspects of the grain-car supply; an open forum on the issues of the 2011 weather patterns and their effect on the supply/demand of equipment and the possible impact of export market expectations on the U.S. grain car supply; and a discussion about upcoming NGCC elections and the need for NGCC members to play a more active role in the NGCC. The full agenda and copies of the White Paper, the 1998 Statement of Principles, and related documents, are posted on the Board's Web site at *http://www.stb.dot.gov/stb/rail/graincar_council.html.*

The meeting, which is open to the public, will be conducted pursuant to the NGCC's charter and Board procedures. Further communications about this meeting may also be announced through the Board's Web site.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: August 23, 2011.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–21943 Filed 8–26–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2011 American Eagle Silver Proof Coin

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the re-pricing of the 2011 American Eagle Silver Proof Coin. The price of the coins will be raised from $59.95 to $68.45.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: August 23, 2011.

Richard A. Peterson,

Deputy Director, United States Mint .

[FR Doc. 2011–22046 Filed 8–26–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2011 American Eagle Silver Uncirculated Coin

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the pricing of the 2011 American Eagle Silver Uncirculated Coin. The price of the coin will be $60.45.

FOR FURTHER INFORMATION CONTACT: B. B. Craig, Associate Director for Sales and Marketing, United States Mint, 801 9th Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: August 23, 2011.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2011–22045 Filed 8–26–11; 8:45 am]

P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Meetings To Prepare and Release 2011 Annual Report to Congress

Advisory Committee: U.S.-China Economic and Security Review Commission.

SUMMARY: Notice is hereby given of meetings of the U.S.-China Economic and Security Review Commission.

Name: William A. Reinsch, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on the U.S.-China economic and security relationship. The mandate specifically charges the Commission to prepare a report to Congress ''regarding the national security implications and impact of the bilateral trade and economic relationship between the

United States and the People's Republic of China [that] shall include a full analysis, along with conclusions and recommendations for legislative and administrative actions * * *''

Purpose of Meetings: Pursuant to this mandate, the Commission will meet in Washington, DC on September 14–15, October 6–7, and October 17–18, 2011 to consider drafts of material for its 2011 Annual Report to Congress that have been prepared for its consideration by the Commission staff, and to make modifications to those drafts that Commission members believe are needed; and release the final annual report to the public on November 16, 2011.

The report review-editing sessions are for members of the Commission to review and edit staff drafts of sections of the Commission's 2011 Annual Report for submission to Congress. The Commission was subject to the Federal Advisory Committee Act (FACA) with the enactment of the Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2006 that was signed into law on November 22, 2005 (Pub. L. 109–108). In accord with FACA's requirement, meetings of the Commission to make decisions concerning the substance and recommendations of its 2011 Annual Report to Congress are open to the public.

Topics To Be Discussed: The Commissioners will be considering draft report sections addressing the following topics:

- The United States-China trade and economic relationship, including its bilateral investment and the role of state-owned enterprises, intellectual property protection and its 5-year plan, technology transfers, and outsourcing.
- China's activities directly affecting U.S. national security interests, including its area control military strategy, space developments, and intelligence activities and capabilities.
- China's foreign and regional activities and relationships, including those pertaining to Taiwan and Hong Kong.
- China's foreign and national security policies.

Dates and Times (Eastern Daylight Time):

—Wednesday and Thursday, September 14–15, 2011 (9 a.m. to 5 p.m.)
—Thursday and Friday, October 6–7, 2011 (9 a.m. to 5 p.m.)
—Monday and Tuesday, October 17–18, 2011 (9 a.m. to 5 p.m.)
—Wednesday, November 16, 2011—Official Press Conference to Release Final Report to the Public—Date, Time and Location will be announced in October on the Commission's Web site at *http://www.uscc.gov.*

ADDRESSES: All report review-editing sessions will be held in The Hall of the States (North Bldg.) located at 444 North Capitol Street, NW., Washington, DC 20001 as follows:

—Wednesday and Thursday, September 14–15: Conference Room 231 (2nd floor)
—Thursday, October 6: Conference Room 333 (3rd Floor)
—Friday, October 7: Conference Room 231 (2nd Floor)
—Monday and Tuesday, October 17–18: Conference Room 231 (2nd floor)
—Wednesday, November 16: Official Press Conference to Release Final Report to Public: Location will be announced on the Commission's Website at *http://www.uscc.gov* in October.

Public seating is limited and will be available on a ''first-come, first-served'' basis. Advanced reservations are not required. All participants must register at the front desk of the lobby.

Required Accessibility Statement: The entirety of these Commission editorial and drafting meetings will be open to the public. The Commission may recess the public editorial/drafting sessions to address administrative issues in closed session. The open meetings will also be adjourned in the noon vicinity for a lunch break. At the beginning of the lunch break, the Chairman will announce the reconvening time for the Annual Report review and editing session so members of the public will know when they may return if they wish to do so.

FOR FURTHER INFORMATION CONTACT: Kathy Michels, Associate Director, U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; Phone: (202) 624–1409; E-mail: *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Pub. L. 109–108 (November 22, 2005).

Dated: August 23, 2011.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2011–21984 Filed 8–26–11; 8:45 am]

BILLING CODE 1137–00–P

FEDERAL REGISTER

Vol. 76 Monday,

No. 167 August 29, 2011

Part II

Department of Labor

29 CFR Part 9

Nondisplacement of Qualified Workers Under Service Contracts; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 9

RIN 1215–AB69;1235–AA02

Nondisplacement of Qualified Workers Under Service Contracts

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Labor (Department or DOL) issues final regulations to implement Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts. The Executive Order establishes a general policy of the Federal Government concerning service contracts and solicitations for service contracts for performance of the same or similar services at the same location. This policy mandates the inclusion of a contract clause requiring the successor contractor and its subcontractors to offer those employees employed under the predecessor contract, whose employment will be otherwise terminated as a result of the award of the successor contract, a right of first refusal of employment under the successor contract in positions for which they are qualified.

DATES: The effective date for this final rule is pending, and the Department will publish a notice in the **Federal Register** announcing the effective date once it is determined.

FOR FURTHER INFORMATION CONTACT: Timothy Helm, Branch Chief, Division of Enforcement Policies and Procedures, Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Room S–3014, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–0064 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: This regulatory action first appeared on the Spring 2009 Regulatory Agenda with regulatory identification number (RIN) 1215–AB69. Due to an organizational restructuring which resulted in the Wage and Hour Division becoming a free-standing agency within the Department, the RIN changed to 1235–AA02. Throughout this final rule, citations to various statutes such as the Service Contract Act have been revised to reflect the recodification of those Acts in January 2011.

I. Executive Order 13495 Requirements and Background

On January 30, 2009, President Barack Obama signed Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts (Executive Order 13495, E.O. 13495, or Order). 74 FR 6103 (Feb. 4, 2009). This Order establishes that when a service contract expires and a follow-on contract is awarded for the same or similar services at the same location, the Federal Government's procurement interests in economy and efficiency are better served when a successor contractor hires the predecessor's employees. A carryover workforce reduces disruption to the delivery of services during the period of transition between contractors and provides the Federal Government the benefits of an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements. As explained in the Order, the successor contractor or its subcontractors often hires the majority of the predecessor's employees when a service contract ends and the work is taken over from one contractor to another. Occasionally, however, a successor contractor or its subcontractors hires a new workforce, thus displacing the predecessor's employees.

Section 1 of Executive Order 13495 sets forth a general policy of the Federal Government that service contracts and solicitations for service contracts shall include a clause that requires the contractor and its subcontractors, under a contract that succeeds a contract for performance of the same or similar services at the same location, to offer those employees (other than managerial and supervisory employees) employed under the predecessor contract, whose employment will be terminated as a result of the award of the successor contract, a right of first refusal of employment under the contract in positions for which they are qualified. Section 1 also provides that there shall be no employment openings under the contract until such right of first refusal has been provided. Section 1 further stipulates that nothing in Executive Order 13495 is to be construed to permit a contractor or subcontractor to fail to comply with any provision of any other Executive Order or law of the United States.

As discussed above in the **DATES** section, this rule will not be effective until the Federal Acquisition Regulatory Council (FARC) issues regulations. The Executive Order requires the FARC to issue regulations in Section 6 of the Order, which is discussed in further detail below.

Section 2 of Executive Order 13495 defines *service contract* or *contract* to mean any contract or subcontract for services entered into by the Federal Government or its contractors that is covered by the McNamara-O'Hara Service Contract Act of 1965 (SCA), as amended, 41 U.S.C. 6701 *et seq.,* and its implementing regulations. Section 2 also defines *employee* to mean a service employee as defined in the SCA. 74 FR 6103 (Feb. 4, 2009). *See* 41 U.S.C. 6701(3).

Section 3 of the Order exempts from its terms (a) contracts or subcontracts under the simplified acquisition threshold as defined in 41 CFR 2.101; (b) contracts or subcontracts awarded pursuant to the Javits-Wagner-O'Day Act, 41 U.S.C. 8501–8506; (c) guard, elevator operator, messenger, or custodial services provided to the Federal Government under contracts or subcontracts with sheltered workshops employing the severely handicapped as described in section 505 of the Treasury, Postal Services and General Government Appropriations Act, 1995, Public Law 103–329; (d) agreements for vending facilities entered into pursuant to the preference regulations issued under the Randolph-Sheppard Act, 20 U.S.C. 107; and (e) employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employees were not deployed in a manner that was designed to avoid the purposes of the Order. 74 FR 6103–04 (Feb. 4, 2009).

Section 4 of Executive Order 13495 authorizes the head of a contracting department or agency to exempt its department or agency from the requirements of any or all of the provisions of the Executive Order with respect to a particular contract, subcontract, or purchase order or any class of contracts, subcontracts, or purchase orders, if the department or agency head finds that the application of any of the requirements of the Order would not serve the purposes of the Order or would impair the ability of the Federal Government to procure services on an economical and efficient basis. 74 FR 6104 (Feb. 4, 2009).

Section 5 of the Order provides the wording for the required contract clause regarding the nondisplacement of qualified workers that is to be included in solicitations for and service contracts that succeed contracts for performance of the same or similar services at the

same location. 74 FR 6104–05 (Feb. 4, 2009). Specifically, the new contract clause provides that the contractor and its subcontractors shall, except as otherwise provided by the clause, in good faith offer those employees (other than managerial and supervisory employees) employed under the predecessor contract whose employment will be terminated as a result of award of the contract or the expiration of the contract under which the employees were hired, a right of first refusal of employment under the contract in positions for which they are qualified. The successor contractor and its subcontractors determine the number of employees necessary for efficient performance of the contract, and may elect to employ fewer employees than the predecessor contractor employed in performance of the work. Except as provided by the contract clause, there is to be no employment opening under the contract, and the successor contractor and any subcontractors shall not offer employment under the contract to any person prior to having complied fully with the obligation to offer employment to employees on the predecessor contract. The successor contractor and its subcontractors must make a bona fide, express offer of employment to each employee including stating the time within which the employee must accept such offer, which must be no less than 10 days. The clause also provides that, notwithstanding the obligation to offer employment to employees on the predecessor contract, the successor contractor and any subcontractors (1) May employ under the contract any employee who has worked for the contractor or subcontractor for at least 3 months immediately preceding the commencement of the contract and who would otherwise face lay-off or discharge; (2) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees within the meaning of the SCA, 41 U.S.C. 6701(3); and (3) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor whom the successor contractor or any of its subcontractors reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job. The contract clause also provides that, in accordance with Federal Acquisition Regulation (FAR) 52.222–41(n), not less than 10 days before completion of the contract, the contractor must furnish the Contracting Officer a certified list of the names of all service employees working under the contract and its subcontracts during the last month of contract performance. The list must also contain anniversary dates of employment of each service employee under the contract and its predecessor contracts either with the current or predecessor contractors or their subcontractors. The Contracting Officer must provide the list to the successor contractor, and the list must be provided on request to employees or their representatives. If it is determined, pursuant to regulations issued by the Secretary of Labor, that the contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the contractor or its subcontractors, as provided in the Executive Order, the regulations, and relevant orders of the Secretary, or as otherwise provided by law. Finally, the clause provides that in every subcontract entered into in order to perform services under the contract, the contractor will include provisions that ensure that each subcontractor will honor the requirements of the clause in the prime contract with respect to the employees of a predecessor subcontractor or subcontractors working under the contract, as well as employees of a predecessor contractor and its subcontractors. The subcontract must also include provisions to ensure that the subcontractor will provide the contractor with the information about the employees of the subcontractor needed by the contractor to comply with the prime contractor's requirement, in accordance with FAR 52.222–41(n). The contractor must also take action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing these provisions, including the imposition of sanctions for noncompliance; provided, however, that if the contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the contractor may request that the United States enter into the litigation to protect the interests of the United States. 74 FR 6104–05 (Feb. 4, 2009).

Section 6 of the Order assigns responsibility for investigating and obtaining compliance with the Order to the Department. In such proceedings, this section also authorizes the Department to issue final orders prescribing appropriate sanctions and remedies, including, but not limited to, orders requiring employment and payment of wages lost. The Department also may provide that where a contractor or subcontractor has failed to comply with any order of the Secretary of Labor or has committed willful violations of Executive Order 13495 or its implementing regulations, the contractor or subcontractor, its responsible officers, and any firm in which the contractor or subcontractor has a substantial interest will be ineligible to be awarded any contract of the United States for a period of up to 3 years. Neither an order for debarment of any contractor or subcontractor from further Government contracts under this section nor the inclusion of a contractor or subcontractor on a published list of noncompliant contractors is to be carried out without affording the contractor or subcontractor an opportunity for a hearing. Section 6 also specifies that Executive Order 13495 creates no rights under the Contract Disputes Act, and disputes regarding the requirement of the contract clause prescribed by Section 5, to the extent permitted by law, will be disposed of only as provided by the Department in regulations issued under the Order. To the extent practicable, such regulations shall favor the resolution of disputes by efficient and informal alternative dispute resolution methods. Finally, Section 6 provides that, to the extent permitted by law and in consultation with the FARC, the Department will issue regulations to implement the requirements of the Executive Order. In addition, to the extent permitted by law, the FARC is to issue regulations in the Federal Acquisition Regulation to provide for inclusion of the contract clause in Federal solicitations and contracts subject to the current Order. *See* 74 FR 6105 (Feb. 4, 2009).

Section 7 of Executive Order 13495 revokes Executive Order 13204 of February 17, 2001, rescinding Executive Order 12933 of October 20, 1994, Nondisplacement of Qualified Workers Under Certain Contracts. *Id. See also* 59 FR 53559 (Oct. 24, 1994), 66 FR 11228 (Feb. 22, 2001).

Section 8 of the Order provides that if any provision of the Order or its application is held to be invalid, the remainder of the Order and the application shall not be affected.

Section 9 of the Order specifies that nothing in Executive Order 13495 is to be construed to impair or otherwise affect the authority granted by law to an executive department, agency, or the head thereof; or functions of the Director of the Office of Management and Budget (OMB) relating to budgetary, administrative, or legislative proposals. In addition, the Order is to be implemented consistent with applicable law and subject to the availability of appropriations, and the Order 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. Section 9 clarifies, however, that the Order is not intended to preclude judicial review of final decisions by the Department in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* 74 FR 6105–06 (Feb. 4, 2009).

As indicated, Section 7 of Executive Order 13495, revoked Executive Order 13204, signed by President Bush on February 17, 2001, which rescinded Executive Order 12933, Nondisplacement of Qualified Workers Under Certain Contracts, signed by President Clinton on October 24, 1994. More specifically, these rescinded Executive Orders pertained to the obligations of successor contractors to offer employment to employees of predecessor contractors on Federal contracts to maintain public buildings. *See* 59 FR 53559 (Oct. 24, 1994), 66 FR 11228 (Feb. 22, 2001). The Department promulgated regulations, 29 CFR part 9 (62 FR 28185) to implement Executive Order 12933 (62 FR 28176 (May 22, 1997)) and, per Executive Order 13204, rescinded them through a Notice appearing in the **Federal Register**. 66 FR 16126 (Mar. 23, 2001). There are some notable differences between Executive Order 13495, and Executive Order 12933. For example, Executive Order 13495 covers all contracts covered by the SCA above the simplified acquisition threshold, whereas Executive Order 12933 was limited to building services contracts in excess of the simplified acquisition threshold for maintenance of public buildings. In addition, exemptions listed for U.S. Postal Service, NASA, military, and Veterans Administration installations (among others) in Executive Order 12933 have been eliminated. A new provision authorizes the head of a contracting department or agency to exempt any of its contracts from the current Order if the agency finds the requirements would not serve the purposes of the Order or would impair the Federal Government's ability to procure services economically and efficiently. In addition, the current Order expressly provides that it applies to subcontracts awarded in amounts equal to or above the simplified acquisition threshold, while coverage under Executive Order 12933 was determined at the prime contract level. Subsequent to publication of the proposed rule upon which this final rule is responsive, the simplified acquisition threshold was raised to $150,000 from $100,000. 75 FR 53129 (August 30, 2010) (codified at 41 CFR 2.101).

II. Discussion of Final Rule

The Department published and sought comments on a proposed rule implementing the provisions of Executive Order 13495 on March 19, 2010 (75 FR 13382 (Mar. 19, 2010)). A total of 21 comments were received from labor organizations, government contractors, and government agency contract personnel, among others. These comments are discussed in the following section-by-section analysis of the final rule.

Subpart A—General

Executive Order 13495 does not establish wage or fringe benefit rates. The minimum wage and fringe benefit rates established under the SCA to be paid service employees will apply to work performed on service contracts covered by the Executive Order. SCA rates will apply equally to successor contracts with a workforce made up of employees who worked under the predecessor contract and to successor contracts with, under one of the Executive Order's exceptions, a workforce not made up of employees who worked under the predecessor contract. The SCA requires contractors and subcontractors performing services on prime contracts in excess of $2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement as provided in wage determinations issued by the Department. These determinations are incorporated into the service contract.

The Department received several comments opposing the Executive Order and questioning its stated purpose. For example, the Professional Services Council (PSC) questioned when private employment under a government contract became an immutable entitlement. The PSC and the Society for Human Resource Management (SHRM) doubted whether the Executive Order would fulfill its stated goals of promoting economy and efficiency in government procurement, and the Associated Builders and Contractors, Incorporated (ABC, Inc.), stated that there was no evidentiary support that nondisplacement of workers would result in greater efficiency. Comments questioning the legality of and rationale for the Executive Order are clearly not within the purview of this rulemaking action. All other comments are summarized in the preamble under the relevant subsections.

Proposed subpart A addressed general matters, including the purpose and scope of the rule, its definitions, coverage under the Order, and the exclusions it provides.

Section 9.1 Purpose and Scope

The Department proposed in § 9.1 to explain the purpose of the proposed rule and to reiterate policy statements from the Executive Order. This section articulates the Executive Order's general requirement that successor service contractors performing on Federal contracts offer a right of first refusal to suitable employment (i.e., a job for which the employee is qualified) under the contract to those employees under the predecessor contract whose employment will be terminated as a result of the award of the successor contract, and emphasizes the Executive Order's underlying principle that the Federal Government's procurement interests in economy and efficiency are served when the successor contractor hires the predecessor's employees and that a carryover workforce both minimizes disruption in the delivery of services during a period of transition between contractors and provides the Federal Government the benefit of an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements. No comments were received on this section; the final rule therefore implements § 9.1 as proposed, except with one additional sentence as discussed below.

Specifically, § 9.1 has been revised to include the following sentence: ''Additionally, the Order also provides that it is to be implemented consistent with applicable law and subject to the availability of appropriations.'' This sentence has been added to emphasize in particular that, as stated in Section 9 of the Order, the Order is to be implemented consistent with applicable law. Along similar lines, Section 1 of the Order provides, as noted, that nothing in the Order shall be construed to permit a contractor or subcontractor to fail to comply with any provision of any other Executive Order or law of the United States. The applicable law encompassed by these Sections includes, for example, the HUBZone program established by title VI of the Small Business Reauthorization Act of 1997, Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. When (and only when) the requirements of such laws

would conflict with the requirements of Executive Order 13495 under the particular factual circumstances of a specific situation, then the requirements of such laws may be satisfied in tandem with—and, when necessary, prior to—the requirements of Executive Order 13495.

For example, HUBZone small business concerns (SBCs) are required to have 35 percent of all of their employees reside in a HUBZone. When both the successor and the predecessor contractors are SBCs, the residence requirement threshold normally could be met through a standard application of this final rule. Under circumstances where the successor is a SBC but the predecessor is not, we believe that HUBZone SBCs can still meet both the requirements of the HUBZone program and the Executive Order. For instance, the successor SBC awardee could first extend offers of employment to the qualified predecessor awardee's employees that reside in a HUBZone. If necessary to reach the residency threshold, the successor HUBZone SBC would next extend offers of employment to qualified residents of a HUBZone who were not employees of the predecessor. The HUBZone SBC could next extend offers for the remaining vacancies to non-HUBZone resident qualified employees of the predecessor awardee. The HUBZone SBC would need to first ensure that it meets the statutory requirements of the HUBZone program so that it is not decertified, and must consider the predecessor's employees pursuant to the Executive Order in doing so. This approach would also apply in other circumstances, such as where the predecessor HUBZone SBC did not maintain the HUBZone residence requirement but was permitted to remain in the program. While the HUBZone SBC must maintain the 35 percent HUBZone residency requirement at all times while certified in the program, there is an exception: an SBC may ''attempt to maintain'' this requirement when performing on a HUBZone contract. When that occurs and the HUBZone SBC is permitted to fall below the 35 percent threshold, it still must meet the requirement any time it submits a subsequent offer and wins a HUBZone contract.

Section 9.2 Definitions

The proposed rule included definitions of several important terms, such as ''contractor'', ''month'', ''same or similar service'', ''managerial employee and supervisory employee'', and ''employee or service employee''. The Department received comments on only two of the proposed definitions.

The Department proposed to define ''employee or service employee'' to mean a service employee as defined in the Service Contract Act of 1965, 41 U.S.C. 6701(3). The Service Employees International Union (SEIU) and Change to Win commented that they agreed with this proposed definition as it is based on the definition under the SCA. No other comments were received on this definition and it is adopted as proposed.

The Department proposed to define ''managerial or supervisory employee'' to mean a person engaged in the performance of services under the contract who is employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541, and specifically sought comments on this proposed definition. The PSC and American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) supported the proposed definition. The PSC commented that ''adopting a different definition would lead to unnecessary confusion about the proper standard to apply in different situations, could lead to unintended consequences regarding coverage, and would create a trap for unwary contractors.''

The American Maritime Officers Union (AMOU) suggested the Department define the term ''managerial or supervisory employee'' through reference to definitions set forth in the National Labor Relations Act (NLRA) or established by the National Labor Relations Board (NLRB). The American Maritime Association (AMA) stated that the proposed definition will not clarify the scope of the supervisory and managerial exclusion and would result in the unintended consequence of removing most ''supervisors'' from the scope of the exclusion. The AMA further commented that the proposed definition of managerial and supervisory employee would require the successor contractor to hire supervisory employees of the predecessor contractor, which would contradict the intent of the Executive Order. The Chamber of Commerce of the United States of America (Chamber) commented that the definition of managerial and supervisory employees should be more expansive than the Department proposed. The Chamber also suggested, like the AMOU, that the Department use the definitions of these terms under the NLRA. The Chamber added that the definition proposed by the Department renders the words ''other than managerial and supervisory employee'' in the Executive Order superfluous because any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR Part 541, is not a service employee under the SCA. The SHRM similarly urged the Department to embrace the definition of ''supervisor'' under the NLRA and recommended that the Department consider how NLRB case law treats the term ''manager.'' This recommendation, according to the commenter, would ''avoid a proliferation and possible contradiction of statutory and regulatory definitions making good-faith compliance more difficult.''

The Department carefully considered the comments received on the definition of ''managerial or supervisory employee'' but is unconvinced that defining the term in accordance with the NLRA or NLRB caselaw is appropriate for the purpose of this Executive Order. As discussed in the preamble to the proposed rule, Sections 1 and 5 of the Executive Order parenthetically exclude from its requirements managerial and supervisory employees, without defining the term. It is the Department's view that this is a reiteration, not an expansion, of the exemption included in the SCA. Defining ''managerial or supervisory employee'' consistent with the SCA definition excludes any person employed in a bona fide executive, administrative, or professional capacity as those terms are defined in the regulations issued under the Fair Labor Standards Act (FLSA), 29 U.S.C. 203 *et seq.,* at 29 CFR part 541. Such employees are exempt from the provisions of the SCA and need not be offered employment on the successor contract. Thus, the successor contractor has complete discretion to decide whom to employ as managers and supervisors on the contract. If a service employee of the predecessor contractor is qualified for a managerial or supervisory position, an offer of employment in that classification would satisfy the successor's obligation to offer the employee employment on the contract, but the successor contractor is under no obligation to make an offer to such a position. Of course, the Department does not administer or enforce the NLRA and it is the Department's view that use of SCA definitions with which contractors are already familiar will facilitate good-faith compliance, rather than making compliance more difficult. Contrary to the view of the Chamber, the Department believes this definition supports and clarifies the policy statement in the Executive Order, which affords the right to an offer of

employment to those service employees who are not managerial or supervisory employees.

The proposed rule defined ''same or similar service'', in relevant part, to mean a service that is either identical to or has characteristics that are alike in substance and essentials to another service. After consideration, the Department has altered this definition to avoid inconsistency with the Executive Order. The language of the proposed definition could have resulted in the exclusion of some ''similar'' services in contravention of the Order. For example, it is the Department's understanding that the term ''same or similar service'' is broader and more inclusive than the term ''substantially the same services'' that is used in the SCA. *See* 41 U.S.C. 6707(c). Therefore, the Department has refined the proposed definition at § 9.2(13) to mean a service that is either identical to or has characteristics that are alike in substance to a service performed at the same location on a contract that is being replaced by the Federal Government or a contractor on a Federal service contract. Apart from that change, the final rule implements the definitions as proposed.

Section 9.3 Coverage

Proposed § 9.3 discussed application of the rule and the Executive Order to all service contracts and their solicitations that succeed contracts for the same or similar service at the same location, except those specifically excluded by § 9.4. No comments were received on this proposed section and the final rule adopts proposed § 9.3 without change.

Section 9.4 Exclusions

Proposed § 9.4 would implement the exclusions contained in Sections 3 and 4 of Executive Order 13495. Proposed § 9.4(a)(1) addressed the exclusion for contracts or subcontracts under the simplified acquisition threshold, as defined in 41 CFR 2.101. 74 FR 6103 (Feb. 4, 2009). The simplified acquisition threshold, at the time the NPRM was published was $100,000; it has since been increased to $150,000. 41 CFR 2.101. In contrast to the prior version of part 9, the proposal did not state that amount in the regulatory text so that in the event that a future statutory amendment changes the amount, any such change would automatically apply to contracts subject to part 9.

Proposed § 9.4(a)(2) explained how the exclusion applies to subcontracts, including when a successor contractor discontinues the services of a subcontractor. The Department interprets the exclusion for contracts and subcontracts under the simplified acquisition threshold as applying to subcontracts of less than $150,000, even when the prime contract is for a greater amount because of the definition of a service contract in Section 2(a) of the SCA and the express terms of the exclusion in Section 3(a) of Executive Order 13495. However, while the proposed § 9.4(a)(1) exclusion would apply to subcontracts of less than $150,000, the covered prime contractor or higher tier subcontractor would still be required to comply with the requirements of this part. Moreover, if a covered contractor that is subject to the nondisplacement requirements were to discontinue the services of a subcontractor at any time during the contract and perform those or similar services itself at the same location, the contractor would be required to offer employment to the subcontractor's employees who would otherwise be displaced and would otherwise be covered in accordance with this part but for the size of the subcontract. As noted in the preamble to the proposed rule, the earlier Executive Order 12933 excluded prime contracts under the simplified acquisition threshold but did not mention subcontracts. The Chamber requested additional guidance regarding the application of the Executive Order to subcontracts. The Department has concluded that proposed § 9.4(a)(2) is sufficiently instructive; as no other comments were received on this paragraph, no revisions have been made to proposed § 9.4(a) and it is implemented in the final rule without change.

Proposed § 9.4(b) implemented the exclusions applicable to certain contracts or subcontracts awarded for services produced or provided by persons who are blind or have severe disabilities. 74 FR 6103–4 (Feb. 4, 2009). Proposed § 9.4(b)(4) clarified that the exclusions provided by § 9.4(b)(1) through (b)(3) apply when either the predecessor or successor contract has been awarded for services produced or provided by the blind or severely disabled, as described. To require Federal service contractors who obtain their work under the specified set-aside programs to offer employment to the predecessor contractor's employees would defeat the purpose of these programs to allow people to participate in the workforce who otherwise would not be able to do so. No comments were received on this paragraph and the final rule implements proposed § 9.4(b) without change.

Proposed § 9.4(c) implemented the exclusion in Section 3(e) of Executive Order 13495 relating to employment where Federal service work constitutes only part of the employee's job. 74 FR 6104 (Feb. 4, 2009). This exclusion applies to an employee who was hired to work on the predecessor's contract and one or more nonfederal jobs. No comments were received on this paragraph and the final rule adopts proposed § 9.4(c) without change. *See* § 9.12(c)(5) (discussion of implementation of section 3(e) of the Executive Order).

Section 9.4(d) Contracts Exempted by Federal Agency

Section 9.4(d) implements the Section 4 exclusion in the Executive Order that provides that the head of a contracting department or agency may exempt its department or agency from the requirements of any or all of the provisions of the Executive Order with respect to a particular contract, subcontract, or purchase order, or any class of contracts, subcontracts, or purchase orders, if the department or agency head finds that the application of any of the requirements of the Executive Order would not serve the purposes of the Executive Order or would impair the ability of the Federal Government to procure services on an economical and efficient basis. 74 FR 6104 (Feb. 4, 2009).

A number of commenters addressed issues relating to proposed language concerning the exemption authority of Federal agencies, including the notification and timing requirements relating to the exemption process, the factors agencies should use when considering whether to exempt contracts, and whether exemption decisions should be reviewable by and appealable to the Secretary of Labor.

The introductory language of paragraph (d) remains as proposed except for a minor clarification specifying that the authority for contracting department or agency heads to exempt certain contracts from the Executive Order stems from Section 4 of the Order.

Section 9.4(d)(1) Agency Determination No Later Than the Solicitation Date

Section 9.4(d)(1) of the proposed rule limited the time in which an agency may decide to exempt contracts to no later than the solicitation date. This limitation was intended to ensure that the contract clause is included in the solicitation, if applicable, as required by the Executive Order.

Two commenters addressed this issue. The Chamber opposed the

requirements that the agency exemption decision be made by the solicitation date and that the decision be supported by a written analysis in which the agency compares anticipated outcomes under both a carryover workforce and a non-carryover workforce scenario. It asserted that these requirements would significantly limit the contracting agency's exercise of its waiver authority and would prevent the contracting agency from having ''the full benefit of the contractors' bids/proposals, many of which might include significant cost savings or other improvements in contract performance if the contract was exempted from coverage.''

A labor advisor with the United States Navy (Navy Labor Advisor), asserted that the final regulations should remove the time limitation for agency exemption decisions, which he characterized as ''an unwarranted infringement on agency deliberations and decisions that are essential to the mission of each agency.'' He added that the time limitation was not needed to ensure that the contract clause is included in the solicitation because, under procurement practices and the Federal Acquisition Regulation, ''any solicitation may be amended to correct oversights, errors, or changes to the originally issued document * * *''.

After carefully considering the comments, the Department has decided to adopt the proposed time limitation for agency exemption decisions to ensure that solicitations accurately reflect agency exemption determinations, either including the contract clause required by the Executive Order or omitting it following an agency exemption determination. This time limitation will ensure that the predecessor contractor's service employees, as well as prospective bidders, receive timely notice of the agency's decision. The Department has added language providing that the failure to follow this procedural requirement shall render any agency exemption decision inoperative and require the inclusion or addition of the clause in Appendix A of the final rule in the solicitation and any resulting contract, subcontract, or purchase order, or class of contracts, subcontracts, or purchase orders.

Section 9.4(d)(2) and § 9.4(d)(3) Written Notice to Affected Workers of Finding and Decision No Later Than Solicitation Date Using the Notification Method Specified in § 9.11(b)

Under § 9.4(d)(2) and § 9.4(d)(3), the Department proposed that when an agency exercises its exemption authority, it is required to notify ''affected workers in writing of the finding and decision no later than the award date'' either in an individual notice given to each worker or through a posting at the location where the work is performed. The notification would need to include facts supporting the decision and use the method specified in proposed § 9.11(b).

A number of commenters addressed this issue. The Chamber stated that requiring an agency to provide written notification to all affected workers that it will be exercising its exemption authority—including the facts supporting its decision—would significantly limit the agency's exercise of its authority.

A Navy Labor Advisor commented that the notification requirement is not supported by the language of the Executive Order and is not possible for agencies to fulfill under current recordkeeping rules for employment and protection of personally identifiable information. He further indicated that the prime contractor, not the contracting agency, should be required to notify affected workers of a waiver. He also stated that agencies lack ''access to workers or the ability to require personally identifiable information,'' and that under certain circumstances, contracting agencies may lack knowledge of who these service employees are or how to provide them with notice of the waiver decision. He added that agencies do not retain postal or e-mail addresses for these service employees; that under certain circumstances, there may be no appropriate place for a contracting agency to post a notice; that the methods called for in the proposed rule would infringe on the privacy of workers in question; that ''neither the Service Contract Act nor the Executive Order provides any rationale or authority to collect such information and no other laws or regulations would require or allow contractors to provide this personal identifiable information (PII) to the contracting agencies,'' and that agencies seek to avoid establishing a '' 'personal service' type relationship where employees are perceived to be directly employed by the contracting agency.'' An individual commenter also expressed concern that the proposed rule could lead to the appearance of personal services contracts.

The AFL–CIO stated that the final rule should clarify that agencies must provide written notice of their intent to exempt a contract to the labor union, if any, that represents the incumbent workers. It also asserted that instead of the date of contract award, notice should be provided at least 180 days before the contract award to ''allow employees and their bargaining representative to have sufficient time to analyze the asserted reasons for the proposed exemption, and, if warranted, to challenge the exemption.''

The SEIU and Change to Win supported the requirement that contracting agencies provide written notice of an exemption decision to affected workers, but stated that the final rule should clarify that notice must also be provided to the labor union, if any, that represents the incumbent workers. They noted that other provisions of the proposed rule provided for the worker representative to receive notice or to make a complaint on behalf of service workers. They also stated that the final rule should require notice of an exemption decision ''sufficiently in advance of the solicitation to bid'' to allow affected workers and their representatives the opportunity to respond to the exemption, and if necessary contest it through an administrative review process. They suggested that such notice be provided no later than 120 days before the solicitation date.

After careful consideration of the comments, the Department has decided to adopt the proposed language requiring notification with five changes. It remains the Department's view that service employees are entitled to written notice of an agency exemption decision. However, we agree with the aforementioned commenters that the obligation to provide the notice should rest with the contractor, and not the contracting agency. Section 9.4(d)(2) and § 9.4(d)(3) have been revised to reflect that the ''contracting agency shall ensure that the predecessor contractor notify affected workers and their collective bargaining representatives in writing of its determination no later than five business days after the solicitation date'' and that ''the agency shall ensure that the predecessor contractor uses the notification method specified in § 9.11(b) of this part to inform workers and their collective bargaining representatives of the exemption determination.'' An agency exercising exemption authority will need to ensure that affected workers ''and their collective bargaining representatives'' are notified of the finding and decision, in writing, no later than five business days after the ''solicitation'' date, i.e., the date the solicitation is issued. The added language is needed to keep the provision consistent with other provisions in the rule and to provide those affected by the exemption decision with additional time to

consider their employment options. (*See* § 9.11(b); § 9.21(a).) For clarity, the Department has also added language providing that the failure to follow this requirement shall render any agency exemption decision inoperative and require the inclusion of the clause in Appendix A of the final rule in the solicitation and any resulting contract, subcontract, or purchase order, or class of contracts, subcontracts, or purchase orders.

The Department considers that written notification be provided to affected workers and their collective bargaining representatives of its exemption finding and decision—including facts supporting the decision—by no later than the solicitation date as consistent with the President's commitment to openness and transparency in government. *See* January 21, 2009, Memorandum for the Heads of Executive Departments and Agencies. 74 FR 4685 (Jan. 21, 2009). Also in the interest of openness and transparency in government, language has been added to this subsection stating that the contracting agency shall notify the Department of its exemption decision and provide the Department a copy of its written analysis no later than 5 business days after the solicitation date, which the Department will post on its Web site at *www.dol.gov.* Language has been added providing that the failure to follow this requirement shall render any agency exemption decision inoperative and require the inclusion of the clause in Appendix A of the final rule in the solicitation and any resulting contract, subcontract, or purchase order, or class of contracts, subcontracts, or purchase orders.

In response to comments stating that notice of the exemption decision needs to be made at an earlier time than the contract award date for affected workers or their collective bargaining representatives to contest the decision with the agency, the Department has changed the time by which notice of the exemption decision must be provided from the award date to no later than five business days after the solicitation date. This change provides increased time for affected workers and their collective bargaining representatives to seek reconsideration of an exemption decision by the head of the contracting department or agency without burdening the agency with providing notice prior to the solicitation date, the date by which the decision must be made. The notification requirement should not be burdensome to fulfill because service contractors on Federal service contracts are already required to maintain, and make available for inspection and transcription, basic employment information concerning their employees, including their names and addresses. *See* 29 CFR 4.6.

Section 9.4(d)(4) Factors and Analysis for Written Agency Determination

Section 9.4(d)(4) of the proposed rule provided that when exercising the authority to exempt contracts, the agency shall prepare a written analysis supporting the determination that application of the nondisplacement provisions would not serve the purposes of the Executive Order or would impair the ability of the Federal Government to procure services on an economical and efficient basis. A number of commenters addressed this issue. Before addressing those comments individually, the Department believes that it may be helpful to summarize both what an exemption determination accomplishes and why the wage and fringe benefit costs of the predecessor contractor are rarely germane to such a determination.

Executive Order 13495 and this final rule simply require a successor contractor and its subcontractors to offer a right of first refusal of employment on a successor contract to qualified service employees who are employed under the predecessor contract and whose employment would otherwise be terminated as a result of the award of the successor contract. When a contracting agency decides to exempt a contract from the Executive Order, that decision reflects a determination that none of the service employees on the predecessor contract should have a right to employment on the successor contract. A decision not to provide a single employee on the predecessor contract with a right to employment on the successor contract generally runs counter to the purpose of Executive Order 13495, which recognizes that the Federal Government's procurement interests in economy and efficiency are served when a successor contractor hires the predecessor's employees

Although an exemption decision can be expected to have a profound impact on whether the employees on a predecessor contract are discharged or retained, it would generally have little, if any impact on the successor's wage and fringe benefit costs. The Executive Order does not establish what wages or fringe benefits the successor employer pays any of its employees. Regardless of whether a contracting agency exempts a contract from the requirements of the Executive Order, SCA-mandated wage rates and fringe benefits still will apply to the successor contractor. An exemption determination simply determines who receives an offer of employment on the successor contract at whatever rate the contracting agency and/or the successor contractor choose (as long as that rate at least equals the applicable SCA rate). Given these realities, any focus at the exemption stage on wage rates or related cost-savings is misplaced.

As noted, the SCA establishes the minimum wage rates and fringe benefits to be paid to service employees on a contract for services. These minimum wage rates and fringe benefits can result from the SCA prevailing wage and fringe benefit rates or, under Section 4(c) of the SCA, the wages and fringe benefits that service employees would have been paid under any collective bargaining agreement that would have applied had the predecessor contractor retained the service contract. 47 U.S.C. 6707(c); 29 CFR 4.163(a). In either case, the SCA sets a floor for wage rates and fringe benefits, and, as noted, that floor will apply regardless of whether an agency exempts a contract from the requirements of the Executive Order. The SCA's wage requirements thus buttress the Department's view that, as noted above, wage and fringe benefit costs on successor service contracts could rarely serve as the basis for any agency to exercise its exemption authority.

Finally, it is important to understand that a contracting agency remains free to consider wage rates and fringe benefits at other stages of the contracting process when it would normally consider such costs. A contracting agency can, for example, consider wage rates and fringe benefit costs at the solicitation stage for purposes other than exercising exemption authority, provided that the agency's consideration of such costs is in accordance with the SCA and other applicable law. Similarly, bidders on service contracts may base their bids on the minimum wage rates and fringe benefits required by the SCA (including, where applicable, wage rates and fringe benefits required by section 4(c) of the SCA). A contracting agency also may consider wage rates and fringe benefit costs at the contract award stage, and may award the contract (if it so chooses and if the award is otherwise consistent with applicable law) to a prospective contractor whose bid reflects the payment of the minimum wage rates and fringe benefits required by the SCA. Thus, the decision to exempt a successor from the requirement to offer jobs to the predecessor's workforce does not interfere with the agency's ability to consider the costs, including the labor costs, of potential contractors. However, the fact that wage rates thus may change between contracts should not be used to

deprive service employees on the predecessor contract of any right to an offer of employment on the successor contract.

Turning to the specific comments received, the Chamber stated that the determination of relevant factors in the agency exemption analysis should be left to the discretion of the contracting agency because ''[t]he contracting agency knows better than DOL what costs and other factors are most significant to a particular contract.'' It found unclear the purpose of a written determination in light of its conclusion that there does not appear to be any right of appeal regarding the agency's decision.

The PSC stated that the contracting agency should be able to delegate its exemption authority to the Contracting Officer for use whenever it would be in the best interests of the government. It stated that the Contracting Officer is the government official best positioned to identify the government's needs and act in its best interests and that the delegation and less rigorous standard would ''eliminate the stigma that a waiver can only be considered in rare circumstances or represents a failure to adhere to government policy.'' It found that the proposed standard ''suggests that the government must first conduct a highly-technical, objective market survey or analysis to determine whether services can be economically and efficiently obtained.'' The PSC also stated that ''collective poor performance of an incumbent labor staff or its resistance to change management'' may not impair the government's ability to obtain services on an economical or efficient basis, but that in such circumstances the contract should be excludable because it may ''prevent the government from obtaining the highest quality services.'' Similarly, the HR Policy Association asked whether agency dissatisfaction with a predecessor contractor because of inefficient work or poor performance by service employees would provide a ''sufficient justification for the contracting agency to exempt the contract or for the agency to authorize certain employees with performance issues'' to be replaced. TechAmerica, an industry association representing the technology industry, requested that the Department consider an exception from the nondisplacement requirements when the predecessor contract has been terminated for default or cause.

A Navy Labor Advisor stated that the requirement of a written analysis supporting an agency's determination of exemption is ''an unnecessary and unsupportable directive to the contracting agencies by DOL,'' and requested that it be removed. An individual commenter stated that when an agency considers the cost of the nondisplacement requirements for a particular contract or class of contracts, it should also consider the savings to successor contractors derived from ''a supply of qualified, experienced service employees.''

The AFL–CIO stated that agencies should only be permitted to exempt contracts based on non-cost factors, and not on anticipated labor cost savings, after making ''a strong and affirmative showing that an exemption is required in order to provide an essential government service.'' This commenter added that the need to provide an essential government service in emergency circumstances could provide an appropriate basis to exempt a service contract. For example, the government's ability to provide necessary services could be seriously impaired as a result of ''a natural disaster, an act of war, or a terrorist attack [that] physically displaces incumbent employees from the geographic location in which they are employed, [making] it impossible for a successor contractor to reach such employees through any economically-reasonable efforts in order to extend the job offers required by the nondisplacement rule.''

The SEIU and Change to Win asserted that the agency exemption authority should be narrowly construed and that agencies should be required to substantiate the findings on which they base an exemption. These commenters further stated that an agency should exempt a contract only if the agency can present clear proof that application of the Executive Order to the contract would seriously impair the ability of the Federal Government to procure services, such as in circumstances where ''the agency cannot procure the needed services if the Executive Order is applied.'' They added that there should exist an ''irrebuttable presumption that the Executive Order does not impair the ability of the Federal Government to procure services'' where, in the past, a Federal service contract has involved the successor hiring all or most of the predecessor's workers, because it has been demonstrated that the agency is able to procure those services with a carryover workforce. Concerned that a broad application of the waiver authority could defeat the purpose of the Executive Order, the SEIU and Change to Win stated that the agency waiver provision of the Executive Order ''could not have been meant to create a means by which agencies could easily exempt some or all of their service contracts.'' Like the AFL–CIO, they asserted that anticipated labor cost savings, including the use of a workforce with less seniority, should never be an appropriate justification for an agency exemption.

As with other exemptions applicable to labor standards, the Department interprets the exemption authority of the agencies under Section 4 of the Executive Order to be narrow. The Executive Order states that the Federal Government's procurement interests in economy and efficiency are served when the successor contractor hires the predecessor's employees. This conclusion is predicated on the determination that a carryover workforce reduces disruption to the delivery of services during the period of transition between contractors and provides the Federal Government the benefits of an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements. Therefore, the Executive Order reflects a presumption that nondisplacement is in the interest of the Federal Government for each contract, class of contracts, subcontract, or purchase order, and the head of a contracting department or agency should only exercise exemption authority in those instances when the presumption can be clearly overcome based on a finding that nondisplacement would not serve the purposes of the Executive Order or would impair the ability of the Federal Government to procure services on an economical and efficient basis. The basis for such a finding must not be arbitrary and capricious. The regulations require a reasoned and transparent written analysis to support the decision to claim the exemption, because the Executive Order provides that it is normally in the government's interest to use a carryover workforce.

In the proposal, the Department specifically requested comments concerning proposed § 9.4(d) and what, if any, specific guidance the regulation should provide regarding the consideration of cost and other factors in exercising an agency's exemption authority, including guidance regarding what information should be included in the agency's written analysis supporting a decision to exercise exemption authority. For example, the Department sought comments on what costs would be most appropriately considered in determining whether application of the Executive Order's requirements would not serve the purposes of the Executive Order or would impair the ability of the Federal Government to procure services on an economical and efficient basis,

and how much weight should be given to such costs. Although the AFL–CIO and the SEIU and Change to Win responded concerning whether the regulation should restrict a contracting agency's ability to exercise the exemption based solely on a demonstration that the cost of the predecessor contractor's workers is greater than the cost of hiring new employees, no specific responses were received to other related inquiries, such as how an agency could project cost savings, whether a contracting agency should be prohibited from making projections based on how it believes a successor contractor may reconfigure the contract or wages to be paid, and what non-cost factors are most appropriately considered in determining whether application of the Executive Order's requirements would or would not serve the purposes of the Executive Order or impair the ability of the Federal Government to procure services on an economical and efficient basis, and how much weight should be given to such non-cost factors.

After careful consideration of the comments received, and based on the purposes of the Executive Order, the Department believes it is appropriate to add language to § 9.4(d)(4) explaining the framework and factors that may be used as well as what factors shall not be used, when conducting an analysis of relevant facts in order to make an exemption decision. Language has also been added to clarify that the failure to properly make such a written analysis shall render the exemption inoperative and require the inclusion of the clause in Appendix A of the final rule in the solicitation and any resulting contract, subcontract, or purchase order, or class of contracts, subcontracts, or purchase orders.

An agency determination that the nondisplacement requirements would not serve the purpose of the Executive Order, or would impair the ability of the Federal Government to procure the services on an economical and efficient basis, must be supported with a detailed written analysis. Such a written analysis, among other things, shall compare the anticipated outcomes of hiring predecessor contract employees against those of hiring a new workforce. The consideration of costs and other factors should reflect the basic finding in the Executive Order that the government's procurement interests in economy and efficiency are normally served when the successor contractor hires the predecessor's employees, and should demonstrate how, in the particular factual circumstances, the finding does not apply. As discussed earlier, because the Executive Order simply requires the successor to offer a job to the predecessor's employees, and because of the minimum wage and fringe benefit rates applicable to employees that are independently established by the requirements of the SCA, the contracting agency's exemption decision should rarely take wage and fringe benefit rates into account. Therefore, a contracting agency's decision to exercise the exemption should rarely be based on a demonstration that the wages and fringe benefits paid to the predecessor contractor's workers are in some manner greater than the wages and fringe benefits to be paid to new employees. Instead, the written analysis typically must demonstrate that the cost savings other than wages and fringe benefits clearly outweigh the benefits of retaining the predecessor's workers under the criteria provided in Section 4 of the Executive Order.

As for factors other than cost, the Executive Order presumes that ''a carryover work force reduces disruption to the delivery of services during the period of transition between contractors and provides the Federal Government the benefits of an experienced and trained work force that is familiar with the Federal Government's personnel, facilities, and requirements.'' In order for an agency to exempt itself from the requirements of the Executive Order, an agency must overcome this presumption by demonstrating why use of the carryover workforce would not be beneficial and would be inconsistent with economy and efficiency. When analyzing whether the application of the Executive Order's requirements would not serve the purpose of the Order and would impair the ability of the Federal Government to procure services on an economical and efficient basis, the head of a contracting department or agency shall consider the specific circumstances associated with the services to be acquired. General assertions or presumptions of an inability to procure services on an economical and efficient basis using a carryover workforce shall be insufficient. Factors that may be considered include, but are not limited to, the following:

- Whether the use of a carryover workforce would greatly increase disruption to the delivery of services, such as during the transition period between contracts, and in its entirety would not yield an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements as pertinent to the contract, subcontract, purchase order, class of contracts, subcontracts, or purchase orders at issue and would require extensive training to learn new technology or processes that would not be required of a new workforce.
- Emergency situations, such as a natural disaster or an act of war, that physically displace incumbent employees from the locations of the service contract work and make it impossible or impracticable to extend offers to hire as required by the Order.

With respect to the job performance of the predecessor contractor's workforce, a contract, subcontract or purchase order may be exempted under Section 4 of the Order if the head of the contracting department or agency reasonably believes, based on the predecessor employees' past performance, that the entire predecessor workforce failed, individually as well as collectively, to perform suitably on the job and that it is not in the interest of economy and efficiency to provide supplemental training to the predecessor's workers. Under those circumstances, it would be futile to require the successor contractor to evaluate the predecessor service employees on an individualized basis, as provided in § 9.12 of the final rule, to determine whether they had performed suitably on the job. A reasonable belief that some subset of the predecessor's service employees failed to perform suitably on the job, standing alone, would not satisfy the exemption standards of Section 4 of the Executive Order because it would not serve the government's procurement interests in economy and efficiency to exercise exemption authority when the predecessor's workforce contains qualified service employees who are familiar with the contracting agency's personnel, facilities, and requirements. Similarly, the termination of a service contract for default, standing alone, would not satisfy the exemption standards of Section 4 of the Executive Order. Such defaults, as well as other performance problems not leading to default, may result from poor management decisions of the predecessor contractor that have been addressed by awarding the contract to another entity, and that do not warrant the exercise of exemption authority, even when such management decisions have negatively affected the overall performance of the workforce.

A head of the contracting department or agency that makes a reasonable determination that an entire predecessor contractor's workforce failed to perform suitably on the job must demonstrate that his or her belief is reasonable and is based upon credible information that

has been provided by a knowledgeable source such as department or agency officials responsible for monitoring performance under the contract. Absent an ability to demonstrate that this belief is based upon written credible information provided by such a knowledgeable source, the employees working under the predecessor contract in the last month of performance will be presumed to have performed suitable work on the contract. The head of a contracting agency or department may demonstrate a reasonable belief that an entire workforce, in fact, failed to perform suitably on the predecessor contract through written evidence that all of the employees, collectively and individually, did not perform suitably. Information regarding the general performance of the predecessor contractor is not sufficient to claim the exception. It is also unlikely that the agency will be able to make this showing where the predecessor employed a large workforce.

Narrowly circumscribing an agency's ability to exempt a contract, subcontract, or purchase order from the requirements of the Executive Order based on poor performance of the predecessor contractor's workforce is consistent with the Section 5(b)(3) of the Executive Order, which expressly contemplates evaluating employee performance on an individual basis. It also ensures that an agency will not claim the exemption based on deficiencies of the predecessor contractor, even when those deficiencies have negatively affected the quality of the predecessor contractor's workforce.

Further, we agree with the SEIU and Change to Win that the seniority of the workforce is an inappropriate and irrelevant consideration for exercising an exemption.

Finally, a contracting agency should not base an exemption determination on inherently speculative assessments of how a successor contractor might reconfigure contract work. Since a contractor may consider the size of its workforce and the job classifications that are needed in the course of determining which employees of the predecessor contractor should receive an offer of employment, the agency's interest in economy and efficiency can be preserved without having to exempt an entire contract or class of contracts from the requirements of the Executive Order.

As discussed, the successor's wage and fringe benefit costs on an aggregate basis do not generally depend on whether its employees come from the predecessor's workforce, and thus are not a permissible basis for an agency exemption decision, absent exceptional circumstances. This is consistent with the presumption in the Executive Order that the Federal Government's procurement interests in economy and efficiency are served when the successor contractor hires the predecessor's employees. Moreover, except with respect to the nondisplacement obligation, the Executive Order does not preclude contracting agencies from considering aggregate wage and fringe benefit costs at the solicitation and award stages. For example, a contracting agency may reconfigure a contract at the solicitation stage in order to reduce costs (including aggregate wage and fringe benefit costs) by, for example, consolidating sites of performance, and it may also consider bidders' calculations of aggregate wage and fringe benefit costs in making contract awards as well. To consider such costs in connection with an exemption decision, however, would mean that service employees on the predecessor contract would have no right of first refusal of employment on such a reconfigured or lower-cost successor contract. Such an outcome would be neither consistent with the presumptions and findings of the Executive Order nor be necessary to ensure that contracting agencies have sufficient flexibility to consider the full range of potential costs at the solicitation and award stages.

Of course, there may be exceptional circumstances in which a contracting agency could consider wage and fringe benefit costs in exercising its exemption authority. As noted, a contracting agency could exercise its exemption authority in emergency situations, such as a natural disaster or an act of war, that physically displace incumbent employees from the locations of the service contract work and make it impossible or impracticable to extend offers to hire as required by the Order. It could also exercise its exemption authority when a carryover workforce in its entirety would not constitute an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements but rather would require extensive training to learn new technology or processes that would not be required of a new workforce. In each of these two scenarios—in which exigent circumstances may make the use of a carryover workforce prohibitively expensive—a contracting agency could consider wage and fringe benefit costs in deciding whether to exercise its exemption authority. There may be other, similar circumstances in which the cost of employing a carryover workforce on the successor contract would be prohibitive, and wage and fringe benefit costs could be considered in such circumstances, as well. Absent such truly exceptional circumstances, however, a contracting agency may not consider wage and fringe benefit costs in making an exemption decision for the reasons described above.

The Department did not change the regulations to provide for an ''irrebuttable presumption that the Executive Order does not impair the ability of the Federal Government to procure services'' under a service contract where, in the past, the contract has involved the successor hiring all or most of the predecessor's workers, as requested by the SEIU and Change to Win. Circumstances surrounding service contracts can change. The Department concludes that such a provision would exceed the standard in Section 4 of the Executive Order.

Language has been added to § 9.4 stating that the written analysis shall be prepared no later than the solicitation date and retained in accordance with FAR 4.805. 48 CFR 4.805. This addition is intended to clarify that the written analysis and the exemption determination are to be made contemporaneously, and that the written analysis is to be retained and made available for disclosure in a manner consistent with the President's commitment to openness and transparency in government.

Section 9.4(d)(5) Reconsideration of Exemption Decisions

Three commenters addressed the issue of whether agency decisions to exempt contracts are subject to challenge or review. Both the Chamber and the SEIU and Change to Win noted that the proposed regulations do not provide for any review of an agency decision to exempt a contract, subcontract or purchase order from coverage of the Executive Order. The SEIU and Change to Win and the AFL–CIO asserted that exemption decisions should be reviewable by and appealable to the Secretary of Labor. The SEIU and Change to Win believe that some oversight is necessary to ensure that an agency exemption is in full compliance with the Executive Order; otherwise, ''the Secretary would be abdicating her responsibility'' to ensure compliance with the Executive Order and, by allowing agencies to exempt contacts without some form of external review, would be warranting ''a breach of fundamental due process.'' They suggested an administrative process

through which interested parties could challenge, and the Department of Labor could review, an agency's exemption decision. The AFL–CIO requested that the final rule require administrative review and Departmental approval of an agency's contract exemption decision in advance of the contract solicitation date.

After careful consideration, the Department has decided not to add provisions for Departmental review of agency exemption decisions because it is the Department's view that the Executive Order does not provide for such review. The Department's final rule is intended to ensure that agencies exercise exemption authority appropriately based on proper consideration of the relevant factors. Such safeguards, rather than Departmental review, are designed to ensure that agencies do not exempt contracts from the nondisplacement protections of the Executive Order in an arbitrary or capricious manner. However, the Department has added language stating that any requests for reconsideration of an exemption decision shall be directed to the head of the relevant contracting department or agency. Such reconsiderations would, of course, be final agency actions appealable in accordance with the Administrative Procedure Act, 5 U.S.C. 701–06.

Contracts Involving the Marine Industry

Finally, the Marine Engineers Beneficial Association (MEBA) requested that the final rule exempt service contracts involving U.S. Coast Guard Licensed Officers because application of the nondisplacement requirements would allegedly disrupt longstanding hiring practices in the maritime industry. Similarly, the AMA and the Seafarers International Union (SIU) requested that the final rule exempt the maritime industry because application of the Executive Order would ''over-ride and cancel long-established industry collectively bargained obligations and practices and frustrate, rather than further, the underlying goals of that Order.'' After consideration, the Department has decided not to add a provision exempting service contracts involving U.S. Coast Guard Licensed Officers specifically or the maritime industry in general because the Executive Order does not provide the Secretary with such authority.

In addition, the Department believes that the provisions governing exemption authority, as presently drafted, suffice to address the concerns raised by the MEBA, the AMA, and the SIU.

Subpart B—Requirements

Proposed subpart B established the requirements that contracting agencies and contractors shall undertake to comply with the nondisplacement provisions.

Section 9.11 Contracting Agency Requirements

Proposed § 9.11(a) provided the regulatory requirement to incorporate the contract clause specified in Appendix A in covered service contracts, and solicitations for such contracts, that succeed contracts for performance of the same or similar services at the same location. Appendix A of the proposed rule established the employee nondisplacement contract clause to implement Section 5 of Executive Order 13495. 74 FR 6105 (Feb. 4, 2009). Paragraph (e) of proposed Appendix A required the contractor to include, in every subcontract entered into in order to perform services under the prime contract, provisions to ensure that each subcontractor honors the requirements of paragraphs (a) through (b) of the employee nondisplacement contract clause with respect to the employees of a predecessor subcontractor or subcontractors working under the contract, as well as employees of a predecessor contractor and its subcontractors. Under proposed Appendix A, the subcontract must also include provisions ensuring that the subcontractor will provide the contractor with the information about the employees of the subcontractor needed by the contractor to comply with paragraph (c) of the employee nondisplacement clause. Paragraph (d) of proposed Appendix A concerned sanctions and remedies for noncompliance with the nondisplacement contract clause. Proposed Appendix A also set forth additional provisions necessary to implement the Order. With the exception of a provision that addressed recordkeeping, similar contract clause provisions appeared in the earlier version of part 9. *See* 62 FR 28188 (May 22, 1997). The additional provisions would appear in paragraphs (f) through (i) of the nondisplacement contract clause. Specifically, proposed paragraph (f) provided notice that under certain circumstances the Contracting Officer will withhold, or cause to be withheld, from the prime contractor funds otherwise due under the subject contract or any other Government contract with the same prime contractor for violations of the Executive Order or these regulations. Paragraph (g) of Appendix A required the contractor to maintain certain records to demonstrate compliance with the substantive requirements of part 9, and specified the records to be maintained. Paragraph (h) required the contractor, as a condition of the contract award, to cooperate in any investigation by the contracting agency or the Department into possible violations of the provisions of the nondisplacement clause and to make records requested by such official(s) available for inspection, copying, or transcription upon request. Paragraph (i) provided that disputes concerning the requirements of the nondisplacement clause would not be subject to the general disputes clause of the contract. Instead, such disputes are to be resolved in accordance with the procedures in part 9.

The Department received three comments on the contract clause provision. The PSC commented that it was concerned that if the Department and the FARC contract clauses are not identical then it would prevent efficient administration of the Executive Order. The PSC recommended that the Department not include the contract clause proposed at Appendix A, but instead, explicitly incorporate by reference the mandatory contract clause promulgated in the FAR. The PSC also stated that the final rule should include a provision similar to that found in the SCA regulations at 29 CFR 4.5(c) indicating that when a contract is not initially considered to be covered by the SCA but is later determined to be, in fact, SCA-covered that the Contracting Officer unilaterally modify the contract to include the relevant SCA clause and wage determination. The PSC commented that a similar provision should be included in part 9 to ensure the incumbent contractor's obligation to timely deliver to the Contracting Officer a list of service employees performing on the contract. The Chamber commented that a ''safe harbor'' provision is necessary for circumstances where the contracting agency erroneously failed to include the nondisplacement contract clause in a contract. It asserted that retroactive application of the clause during the course of the contract would result in ''chaos or significant liability.'' The Chamber stated that if contract performance had begun with non-predecessor contractor employees, the successor contractor would be required to terminate its workforce in sufficient numbers to accommodate any qualified workers or pay back wages to workers who were denied their right to an offer of employment. The Chamber also argued that a contracting agency's

determination that a contract is not subject to the provisions of the Executive Order because it is not for the same or similar service, or for any other reason, should be dispositive for the duration of the contract.

The Small Business Administration, Office of Advocacy (SBA) sought clarification concerning the effect compliance with the proposed rule would have on non-unionized successor contractors. Specifically, it asked whether a successor contractor who hires a predecessor contractor's employees under Executive Order 13495 will be deemed a successor to the predecessor's collective bargaining agreement under the NLRA, 29 U.S.C. 151–169. It also suggested that the Department disclose in contract bidding materials whether or not the predecessor contractor has a collective bargaining agreement and whether it is a union shop. The SHRM also inquired about the possible interaction of the proposed rule with the NLRA.

In response to the PSC's comments, the Department notes that the Executive Order requires the FARC and the Department to consult in regards to drafting regulations that are required for implementation of the Order. The Department has consulted with the FARC and will continue to work with the FARC to promote consistency in the regulations.

The Department understands the concern raised by the Chamber; however, we believe that inclusion of a ''safe harbor'' provision in the regulation would be inappropriate and would exceed the Secretary's authority under the Executive Order. The Department also notes that a mandatory contract clause expressing a ''significant or deeply ingrained strand of public procurement policy,'' such as the clause mandated by Executive Order 13495 and its implementing regulations, ''is considered to be included in a contract by operation of law.'' *S.J. Amoroso Constr. Co. Inc.,* v. *United States,* 12 F.3d 1072, 1075 (Fed. Cir. 1993); *see also Office of Federal Contract Compliance Programs, United States Dep't of Labor* v. *UPMC Braddock, UPMC McKeesport, and UPMC Southside,* Case No. 08–048, 2009 WL 1542298, at *3 (Admin. Rev. Bd. May 29, 2009). Therefore, the Department concludes that it is not necessary to include a provision in the final rule mirroring 29 CFR 4.5(c), as suggested by the PSC, in order to require the Contracting Officer to modify such a contract by adding the clause required by Executive Order 13495 and the final rule. However, where the provisions of the Executive Order were incorrectly omitted from a contract or a contract solicitation, the Department shall, consistent with the Executive Order, employ informal alternative dispute resolution to remedy the situation and may require the retroactive application of the nondisplacement requirements of the Executive Order and its implementing regulations. Additionally, in those instances where the Department is notified of the potential misapplication, of the contract clauses (such as the improper inclusion or omission of those clauses) prior to contract award, the Department will notify the contracting agency and provide advice concerning how to revise the solicitation. In response to comments, the Department added paragraph (f)(1) to Appendix A to require the predecessor contractor to provide a certified seniority list to the Contracting Officer not less than 30 days before completion of the contract. Where changes to the workforce are made after the submission of the list provided 30 days before completion of the contract, the predecessor contractor shall furnish an updated certified list to the Contracting Officer not less than 10 days before completion of the contract. *See* § 9.12(e) for further discussion of this change to the contract clause. Proposed paragraph (f) has been renumbered as (f)(2).

Concerning the possible effect of the final rule on an employer's obligations under the NLRA, it is the Department's conclusion that any statement about the potential interplay between the nondisplacement provisions of this final rule and the NLRA would exceed Departmental authority; the Department does not administer or enforce the NLRA and the NLRB has not ruled on whether a successor contractor under these or similar circumstances would also be a successor in interest for NLRA purposes. The Department declines the SBA's suggestion that the Department supplement the bidding materials of contracting agencies with information concerning whether the predecessor has a collective bargaining agreement and a unionized workforce; such action would exceed the Department's responsibilities under Executive Order 13495. When a collective bargaining agreement governs the wage rates and fringe benefits of service employees employed on the predecessor contract, the provisions of section 4(c) of the SCA require the successor contractor to pay no less than the predecessor's contractor's collective bargaining agreement rates.

Proposed § 9.11(b) specified that contracting agencies must provide notice to incumbent service employees when the contract on which they are employed will be awarded to a successor contractor. Under the proposed language in Appendix B, the Contracting Officer shall provide written notice to such service employees of their possible right to an offer of employment by either posting a notice in a conspicuous place at the worksite or delivering it to the employees individually. Under the proposal, where a significant portion of the incumbent contractor's workforce is not fluent in English, the notice shall be provided in both English and the language with which the employees are more familiar. The Department would translate the notice into several foreign languages and make the English and foreign language versions available in a poster format to contracting agencies via the Internet in order to allow easy access; however, another format with the same information may be used. Multiple foreign language notices would be required where significant portions of the workforce speak different foreign languages and there is no common language. If, for example, a significant portion of a workforce spoke Korean and another significant portion of the same workforce spoke Spanish, then the contracting agency would need to provide the information in English, Korean, and Spanish. Under those circumstances, providing the information only in English and Korean typically would not provide the notice in a language with which the Spanish speakers are more familiar than English.

Proposed § 9.11(b) did not provide for notice through electronic communications; instead, the Department sought comments as to whether allowing contracting agencies an electronic notification option, in lieu of physical posting or providing a paper copy to the worker, will provide the agencies greater flexibility and efficiency without sacrificing the quality of the information provided to workers, especially when contract work is performed at a location that is remote from procurement staff.

The Department received several comments on the notification requirements in proposed § 9.11(b). The U.S. Air Force Installations & Sourcing Division stated that because the Contracting Officer has no contact information for contractor employees, and because the contract clause already puts the contractor on notice regarding its responsibilities with respect to nondisplacement, the requirements for agency contracting personnel to notify employees and the contractor of their rights and responsibilities are burdensome and redundant.

A Navy Labor Advisor commented that requiring the successor contractor to distribute the notices would result in a collection of Personal Identifiable Information (PII) in the form of employee mailing and email addresses. He suggested that because the contracting agency has a direct relationship with only the prime contractor, the requirement for direct notice to the employees should be placed upon the prime contractor. Furthermore, this commenter expressed the concern that contracting agency acquisition personnel are already overburdened and that, ''regardless of the good and honorable intentions of contracting agency acquisition officials, the notice requirements will likely *not* get accomplished routinely as currently written into the Part 9 regulations.'' However, if the requirement to provide the notice remains with the contracting agency, he added, the contracting agency should be allowed to distribute the notice via a general electronic posting, since service employees often work in facilities not controlled by the contracting agency. The AFL–CIO commented that providing electronic notification to employees is reasonable, assuming the agency has determined that the workforce has the ability to receive the e-mail. This commenter added that the agency should also be required to physically post a copy of the notice at the job site. The PSC stated that e-mail notification would encourage compliance with the proposed rule; however, such e-mail notification would only be sufficient when employees hold e-mail accounts maintained by the predecessor contractor or government.

Concerning the proposed requirement that notice be provided in English and, when appropriate, in other languages, the HR Policy Association suggested that the final rule clarify what constitutes a ''significant'' portion of the workforce in terms of how many employees speak a language other than English, as the notification requirement would put a burden on the successor contractor if it would have to create notices and new offer letters in multiple languages if it was determined that a significant portion of its workforce spoke a language other than English. A Navy Labor Advisor, along with the U.S. Air Force Installations and Sourcing Division, also stated that because the incumbent contractor knows best the languages of its employees, it should be responsible for distributing notices.

It remains the Department's view that notifying service employees of their possible right to an offer of employment is an effective means by which to ensure compliance with the Executive Order. However, we do agree with the aforementioned commenters that the obligation to provide the notice should rest with the contractor, and not the contracting agency. Section 9.11(b) has been revised to reflect that the ''Contracting Officer will ensure that the predecessor contractor provide written notice to service employees of the predecessor contractor of their possible right to an offer of employment'' and that ''Contracting Officers may advise contractors to provide the notice set forth in Appendix B * * *'' This is consistent with ''existing'' contractor obligations under the SCA with regards to providing notice of compensation through posting ''or the delivery'' of the applicable wage determination, and SCA poster. 29 CFR 4.183, 4.184. Therefore, the Department believes that placement of this obligation with the contractor is appropriate and best accomplishes the goal of employee notification.

Concerning providing notice through the use of electronic communications, the Department has decided, after careful consideration of the comments, to allow contractors to distribute the notices through the use of effective electronic communications. The Department has added language to the rule allowing contractors to use an effective electronic mail communication, and describing effective electronic communication. To be effective, such a communication must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice. Any particular determination of the adequacy of a notification, regardless of the method used, must be fact-dependent and made on a case-by-case basis. The Department recognizes that reliance on electronic communication will increase in the future and often may provide an inexpensive and reliable way to communicate information quickly. For example, using electronic mail may be the most effective method to notify service employees who work in facilities not controlled by the contractor. The Department disagrees with the PSC that sufficient e-mail notification would require employees to have email accounts maintained by the predecessor contractor or the government. Additionally, the Department declines to implement the suggestion from the Navy Labor Advisor that contracting agencies be allowed to distribute the notice via a general electronic posting. The Department believes that providing for individual electronic notices to workers will result in the affected workers receiving the notice and appropriately addresses the concern of providing notice to service employees.

Concerning the proposed requirement that the notice be provided in English and in other languages, as appropriate, the Department notes that this requirement is similar to regulatory requirements implementing other DOL-administered and enforced statutes, such as the Family and Medical Leave Act, the H–2A provisions of the Immigration and Nationality Act, the Migrant and Seasonal Agricultural Worker Protection Act, and Executive Order 13496, Notification of Employee Rights Under Federal Labor Laws. The term ''significant portion'' has not been defined under these other regulations, and the lack of a definition or bright-line test has not prevented employers from complying with the requirement. For these reasons, the term is not defined in the final rule. If there is a question of whether a portion of the workforce is significant and the Department has a poster in the language common to those workers, the notice should be posted in that language.

Proposed § 9.11(c) requires the Contracting Officer to provide the list of employees employed by the predecessor contractor, referenced in proposed § 9.12(e), to the successor contractor and, on request, to employees or their representatives. A Navy Labor Advisor suggested that two lists be required: an alphabetical list, provided long before the end of the predecessor contract and used to comply with the Executive Order, and a list organized by date of hire, provided at the beginning of contract performance and used for compliance with SCA-mandated wage and fringe benefit terms. This commenter asserted that the use of two separate lists would protect more senior employees from discrimination by concealing their seniority during the transition process. The Department's consideration of this comment can be found in the discussion of proposed § 9.12(e). No other comments were received on this provision and the final rule implements this paragraph as proposed.

Proposed § 9.11(d) addressed Contracting Officers' responsibilities regarding complaints of alleged violations of part 9. As under the prior version of part 9, the proposed rule provided that contracting agencies would initially receive complaints of alleged violations of the nondisplacement requirements and, in a compliance assistance mode, provide information to the complainant and

contractor about their rights and responsibilities under the employee nondisplacement provision of the contract.

Under the proposed rule, contracting agencies would not be obligated to forward to the Wage and Hour Division (WHD) any complaint that is withdrawn because of this compliance assistance. Thus, for example, a Contracting Officer would not need to forward to the WHD a complaint that an employee withdraws because the employee was previously not aware of the application of a particular exclusion. In all other cases, the contracting agency would forward certain information necessary for the Department to determine compliance. Under the proposal, the Contracting Officer, within 30 days of receipt of a complaint, would forward to the WHD headquarters any allegations of any violation of this part; available statements by the employee or the contractor regarding the alleged violation; evidence that a seniority list was issued by the predecessor and provided to the successor; a copy of the seniority list; evidence that the nondisplacement contract clause was included in the contract or that the contract was exempted by the agency; information concerning known settlement negotiations between the parties (if applicable); and other pertinent information the Contracting Officer chooses to disclose. The proposal also required the Contracting Officer to provide copies of the information to the successor contractor and the complainant. To assist the contracting agency in providing information to the WHD and to protect the interests of the contracting agency, the proposal provided for the contracting agency to conduct an initial review of any nondisplacement complaint, including obtaining statements of the positions of the parties and inspecting the records of the predecessor and successor contractors (and making copies or transcriptions thereof); questioning the predecessor and successor contractors and any employees of these contractors; and requiring the production of any documentary or other evidence deemed relevant to determine whether a violation of this part had occurred. Contracting agencies would be obligated to refer questions of interpretations regarding part 9 to the nearest WHD local office.

The Department received few comments on this provision. The SEIU and Change to Win as well as the AFL–CIO both commented that the 30-day period for the contracting agency to forward complaints to the WHD constituted an appropriate amount of time in order for complaints to be handled expeditiously. A Navy Labor Advisor requested the elimination of the entire provision, suggesting that WHD handle all complaints. This commenter claimed that ''there is no basis for involving the contracting agency in the receipt or resolution of complaints.'' In addition, contracting officers from Federal agencies represented on the FARC expressed their concerns with the implementation of this proposed requirement. After careful consideration of these comments, the Department has revised § 9.11(d) to limit the Contracting Officer's responsibilities with regard to handling complaints. The Contracting Officer is no longer responsible for initial review of or compliance assistance with complaints. Instead, the Contracting Officer shall be responsible for reporting information to the WHD within 14 days of WHD's request. Because the contracting agency no longer has the responsibility of reviewing complaints, the Department believes 14 days is an appropriate timeframe within which to require production of information necessary to evaluate the complaint. Further consideration of this comment can be found in the discussion of § 9.21(a).

Section 9.12 Contractor Requirements and Prerogatives

General

Proposed § 9.12 articulated contractors' requirements and prerogatives under the nondisplacement requirements. The proposed section included the general obligation to offer employment, the method of the job offer, exceptions, permitted staffing reductions, obligations near the end of the contract, recordkeeping, and obligations to cooperate with reviews and investigations.

Proposed § (a)(1) of this section implemented the Executive Order requirement that no employment openings may be posted before the successor contractor has offered employment to the employees on the predecessor contract. Under the proposed rule, except as provided under the exclusions listed in proposed § 9.4 and the exceptions in proposed § 9.12 paragraphs (c) and (d), a successor contractor or subcontractor could not fill any employment openings under the contract prior to making bona fide, express offers of employment, in positions for which the employees are qualified, to those employees employed under the predecessor contract whose employment would be terminated as a result of award or expiration of the contract under which they were hired. Except as provided under the aforementioned exclusions and exceptions, all employees working on the contract at the time of contract completion, regardless of length of tenure, would be entitled to such an offer. The successor contractor and its subcontractors would be required to make a bona fide, express offer of employment to each employee and state the time within which the employee must accept such offer, but in no case would the period within which the employee must accept the offer of employment be less than 10 days.

The HR Policy Association suggested that the final rule should permit a successor contractor to post and offer positions to non-predecessor employees within the same time frame—at least 10 days—during which the successor contractor offers positions to predecessor employees, in case the predecessor employees do not accept the job offers. The HR Policy Association also commented that proposed § 9.12(a)(1) implied that if an employee was laid off because, for instance, the successor contract has fewer positions in a particular job, the successor contractor must permit the otherwise displaced employee to be offered other positions for which he or she is arguably minimally qualified, including jobs he or she never performed before. This commenter recommended that the final rule clarify that the right of first refusal exists for predecessor employees who would perform the same job with the successor employer. The SEIU and Change to Win commented that proposed § 9.12(a)(1) did not specify the manner in which such offers should be made.

The Department disagrees with the HR Policy Association's assertion to the extent that it suggests that the successor contractor would be required to offer a position to an employee who is not qualified for the position. Proposed § 9.12(b)(4) described the criteria by which a successor contractor can determine whether an employee is qualified for the position, based upon the employee's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and the Department believes this section provides appropriate guidance to successor contractors for determining whether a particular employee is qualified. The Department also disagrees with this commenter's suggested revision to allow the successor contractor to make contingent offers of employment to non-predecessor employees in the period

during which predecessor employees are considering the successor's offer. The Department notes that the HR Policy Association's suggestions to provide contingent offers to non-predecessor employees would be contrary to the express language of the Executive Order.

Proposed § 9.12(a)(2) clarified that the successor contractor's obligation to offer a right of first refusal exists even if the successor contractor was not provided a list of the predecessor contractor's employees or the list did not contain the names of all persons employed during the final month of contract performance. The Navy Labor Advisor suggested that this requirement should be eliminated entirely, asserting that the successor contractor would have no reason to know, in the absence of a seniority list, to whom it is legally required to offer employment. He also suggested that responsibility should be placed upon the predecessor contractor to provide an accurate seniority list or other information on a timely basis rather than to place what he characterized as unreasonable demands upon the successor contractor and/or the contracting agency. The SBA Office of Advocacy also commented that if a list of employees is not provided by the predecessor contractor, then the successor contractor may incur costs in trying to determine to which employees it is supposed to extend job offers. An individual commenter recommended that if the predecessor contractor fails to provide a list of incumbent employees, then ''the successor contractor [should] be permitted to offer probationary employment to incoming employees, with the understanding that employment may be revoked upon a good faith finding that the employee was not previously employed.'' The PSC also expressed concern about a predecessor contractor failing to furnish a list of employees, and suggested that the Contracting Officer should have the authority to allocate remedies to the responsible party in an effort to encourage compliance and allocate risks of non-compliance.

After carefully considering the comments, the Department has decided to adopt the proposed language without change. The Department notes that meeting the requirement to make an offer of employment should not be burdensome because the predecessor contractor may use the list submitted to satisfy the requirements of the SCA contract clause specified at 29 CFR 4.6(l)(2) to meet its list submission requirement under part 9. In those instances where the list is not provided or is incomplete, the Department disagrees that the nondisplacement requirements should be extinguished or altered. While sympathetic to the successor contractor's needs in such circumstances, the Department concludes that waiving the predecessor employees' right of first refusal of employment is not consistent with the Executive Order. Furthermore, the Department is not authorized under the Executive Order to make such an exception. The Department also does not agree that a successor contractor should be permitted to offer probationary employment.

Proposed § 9.12(a)(3) discussed determining the employee's eligibility for the job offer and provided related guidance. While a person's eligibility for a job offer usually would be based on whether his or her name is included on the certified list of all service employees working under the predecessor's contract or subcontracts during the last month of contract performance, a successor contractor would also be required to accept other credible evidence of an employee's entitlement to a job offer. For example, even if a person's name does not appear on the list of employees on the predecessor contract, an employee's assertion of an assignment to work on a contract during the predecessor's last month of performance, coupled with contracting agency staff verification, could constitute credible evidence of an employee's entitlement to a job offer. Similarly, an employee could demonstrate eligibility by producing a paycheck stub identifying the work location and dates worked for the predecessor. The successor could verify the claim with the contracting agency, the predecessor, or another person who worked at the facility.

The Chamber asserted that the presumption that all employees on the seniority list are entitled to a right of first refusal should be reciprocal, so that the successor contractor could presume that only those employees identified on the seniority list are entitled to a right of first refusal. A Navy Labor Advisor requested that the Department provide additional examples of proof of credible evidence of entitlement to a job offer, while SEIU and Change to Win recommended that the regulations make clear that the submission of any evidence of employment is acceptable as long as such evidence is credible.

The Department disagrees with the Chamber's suggestion that only those employees whose names appear on the seniority list should be entitled to an offer of employment under the Executive Order. To deny an employee an offer because of a failure of the predecessor contractor to meet its obligations under the Executive Order would unfairly disadvantage the employee. The final rule adopts the proposed language without change.

Section 9.12(b) Method of Job Offer

Proposed § 9.12(b) discussed the method of the job offer. Proposed § 9.12(b)(1) stated that except as otherwise provided in part 9, a contractor must make a bona fide express offer of employment to each employee on the predecessor contract before offering employment on the contract to any other person. The obligation to offer employment would cease upon the employee's first refusal of a bona fide, express offer to employment on the contract. Proposed § 9.12(b)(2) provided that the contractor shall state the time period within which the employee must accept the employment offer, but in no case may that time period be less than 10 days. Proposed § 9.12(b)(3) required the successor contractor to make an oral or written employment offer to each employee, and, in order to ensure that the offer is effectively communicated, to take reasonable efforts to make the offer in a language that each worker understands.

Proposed § 9.12(b)(4) clarified that the employment offer may be for a different position on the contract than the position the employee held on the previous contract. An offer of employment on the successor's contract would generally be presumed to be a bona fide offer of employment even if it was not for a position similar to the one the employee previously held, provided that the position was one for which the employee was qualified. Questions concerning an employee's qualifications would be decided based upon the employee's education and employment history with particular emphasis on the employee's experience on the predecessor contract. A successor contractor would have to base its decision regarding an employee's qualifications on credible information provided by a knowledgeable source such as the predecessor contractor, the local supervisor, the employee, or the contracting agency. For example, an oral or written outline of job duties or skills used in prior employment, school transcripts, or copies of certificates and diplomas all would be credible information. Under proposed § 9.12(b)(5), the offer of employment could be for a position providing different terms and conditions of employment than those that applied to the employee's work for the predecessor contractor, where the different terms

and conditions are not related to a desire that the employee refuse the offer or that other employees be hired. Lastly, proposed § 9.12(b)(6) provided that, where an employee is terminated under circumstances suggesting the offer of employment may not have been bona fide, the facts and circumstances of the offer and the termination will be closely examined to ensure the offer was bona fide.

Many of the comments received on proposed § 9.12(b) expressed concern with the timing of required actions, particularly the time frame between the successor contractor's receipt of the list of the predecessor contractor's employees (seniority list) from the contracting agency, the timeframe within which employees must respond to an offer of employment, and the start date of the contract. This issue is discussed in greater detail with respect to proposed § 9.12(e).

CAE USA, Inc. commented that there is a possibility that positions will be unfilled at the start of the contract, since the obligatory offer of employment to the predecessor contractor employee has a deadline for acceptance on or after the contract start date. A Navy Labor Advisor commented that this section must be supplemented with additional information because it fails to address predecessor contractor employees that may, in fact, refuse a bona fide employment offer. This commenter also suggested that the Department include the full description of how determinations of qualification would be made in the text of the final rule. TechAmerica suggested that successor contractors be given the flexibility to review the qualifications of incumbent personnel before those employees are offered employment. The HR Policy Association, the Chamber, and TechAmerica commented concerning hiring practices, stating that the final rule should identify whether the application of the successor contractor's ''higher standards for employment'' or ''normal hiring validation processes'' (e.g., requiring passing a drug test as a condition of employment) would be permissible in determining whether an employee is qualified. The SBA Office of Advocacy sought clarification on whether successor contractors can vet the predecessor employees through means such as, but not limited to, interviews, drug tests, and security tests.

The AFL–CIO commented that the final rule should require all employment offers by successor contractors to be made in writing in order to reduce disputes about whether offers were made and whether they were bona fide. This commenter added that having the offer in writing would be particularly helpful for workers who are not fluent in English. The SEIU and Change to Win stated that the proposed requirement that an employer ''take reasonable efforts to make an offer in a language that each worker understands'' should require that offers be made in English and in a language that the worker understands. The International Union of Operating Engineers (IUOE) commented that to ensure that service workers receive an offer that affords prevailing wage protection, there should be no presumption that an offer of employment to a lower paying job is a bona fide offer. The IUOE suggested that the positions offered should, as a general rule, be in the same classifications or in higher paid classifications for individual workers, stating that this section as proposed will exacerbate the existing problem of deliberate misclassification of prevailing wage workers by creating an additional incentive to misclassify workers. The AFL–CIO stated that offers for lesser pay or benefits cannot presumptively be considered bona fide, and should only be considered bona fide if the successor contractor proves by clear and convincing evidence that the reasons for the offer are not related to a desire to reduce labor costs, to induce the incumbent employee to refuse the offer, or to ensure that other employees are hired for the offer. The SEIU and Change to Win stated that to allow an employer to offer a lesser position when the person's equivalent position is available cannot be considered a ''bona fide offer of employment.'' They suggested that the final regulations provide that a ''bona fide offer of employment'' must be for an equivalent or better position under the successor contract as long as such a position remains open. The SEIU and Change to Win also commented that the provision as proposed is inadequate because it would allow successor contractors to hire employees who did not work for the predecessor contractor at higher wages and benefits than it offers the predecessor's employees for the same position.

The Chamber commented that if the provision allowing the successor to offer employment to a position with different terms and conditions did not exist, Federal contractors would be significantly disadvantaged when attempting to craft appropriate bids and could easily be locked into inefficient business models that would further hinder the provision of economic and efficient services. This commenter suggested that clearer language creating a presumption in favor of the employer and requiring more than a suggestion that the offer was not bona fide to rebut the presumption would go a long way toward making this important part of the regulations practically functional. The PSC expressed concern that the provision concerning termination after contract commencement would restrict companies from using policies of ''at will'' employment to terminate ''employees who fail to deliver excellent services.'' It also stated that such examination of a successor Federal service contractor's termination decisions would contradict or preempt state at-will employment laws, and that the proposed rule does not indicate the standard that will be used in government investigations to determine whether a termination was bona fide or pretextual.

After a careful review of the comments, the Department has concluded that a successor contractor may apply employment screening processes (i.e., drug tests, background checks, security clearance checks, and similar pre-employment screening mechanisms) only when such processes are provided for by the contracting agency, are conditions of the service contract, and (in addition to being otherwise consistent with applicable Federal and state law) are consistent with the Executive Order. Conversely, a successor contractor may not impose its own hiring standards (such as college degree requirements for particular positions) in making determinations regarding whether an employee of a predecessor contactor is qualified. Contracting agencies and prospective bidders and successor contractors may exchange views during the contracting process about the need for particular employment screening processes. For example, a prospective bidder may inform a contracting agency that the bidder requires drug testing of all of its service employees and may recommend that the contracting agency provide for such drug testing in connection with the service contract; whether drug testing would be permitted in this circumstance would depend upon whether the contracting agency agrees with the bidder and provides for such testing as provided in this rule. With respect to determining employee qualifications, the Executive Order focuses on an employee's past performance, and it specifically provides that a right of first refusal need not be offered to an employee whom the contractor or any of its subcontractors reasonably believes, based on the particular employee's past performance, has failed to perform

suitably on the job. Consistent with the Executive Order, the final rule provides that questions concerning an employee's qualifications should be decided based upon the employee's education and employment history, with particular emphasis on the employee's experience on the predecessor contract. A contractor's hiring standards or employment screening processes typically would not measure the employee's performance on the predecessor contract, and use of such standards or processes thus could not be used to determine whether an employee is qualified unless a contracting agency provided for use of such standards or processes and made them a condition of the service contract. Such standards or processes would, of course, also need to be consistent with the Executive Order; a contracting agency or successor contractor could not, for example, determine that otherwise-qualified service employees on a predecessor contract would not be qualified to perform the same or similar services on a successor contract because they lack a college degree. The Department has added language to § 9.12(b)(1) to reflect these changes.

In response to concerns raised by some commenters regarding a successor contractor offering employment to a qualified employee on different terms and conditions than those under which the employee worked for the predecessor contractor, the Department notes that nothing in the Executive Order or in the SCA prevents a contractor from restructuring its staff and putting its employees into other positions for which they are qualified or from subjecting them to different terms and conditions of employment. The Department does not agree that continuing to provide contractors on Federal service contracts with such flexibility will lead to an increase in employee misclassification. The Department also disagrees that offers must be made in writing to be sufficient. Adequate oral or written offers could satisfy the requirements of the Executive Order.

The Department advises that proposed § 9.12(b)(6) concerns only those terminations that suggest earlier employment offers were not bona fide. Such terminations would circumvent the requirements of the Executive Order. Because the Secretary is charged with enforcing compliance with the Executive Order, it is appropriate for her to closely examine terminations that suggest a failure to provide a bona fide offer of employment. The Department does not agree that § 9.12(b)(6) will conflict with the requirements of state employment laws, but notes that the Executive Order, and its implementing regulations, will provide controlling law concerning the nondisplacement of qualified workers under Federal Government service contracts. The Department also does not believe that it is necessary to articulate a standard in the final rule that will be used in termination investigations to determine whether an employee received a bona fide offer of employment. The final rule implements proposed § 9.12(b) with the modification noted above. No other changes were made to the proposed provision.

Section 9.12(c) Exceptions

In proposed § 9.12(c), the Department addressed the exceptions to the general obligation to offer employment under Executive Order 13495. These exceptions are included in the contract clause established in section 5 of the Order and are distinct from the exclusions discussed in § 9.4. The exceptions specify both certain classes of contracts and certain employees excluded from the provisions of Executive Order 13495. The exception from the successor contractor's obligation to offer employment on the contract to employees on the predecessor contract prior to making the offer to anyone else does not relieve the contractor of other requirements of this part (e.g., the obligation near the end of the contract to provide a list of employees who worked on the contract during the last month). The exceptions are to be construed narrowly and the contractor will bear the burden of proof regarding the appropriateness of claiming any exception.

Under proposed § 9.12(c)(1), a contractor or subcontractor would not be required to offer employment to any employee of the predecessor who will be retained by the predecessor contractor. The contractor would be required to presume that all employees hired to work under a predecessor's Federal service contract will be terminated as a result of the award of the successor contract, absent an ability to demonstrate a reasonable belief to the contrary based upon credible information provided by a knowledgeable source such as the predecessor contractor, the employee, or the contracting agency.

Proposed § 9.12(c)(2) provided that a successor contractor or subcontractor would be allowed to employ under the contract any employee who has worked for the successor contractor or subcontractor for at least 3 months immediately preceding the commencement of performance under the contract, i.e., the first date of performance of the contract, and who would otherwise face lay-off or discharge. As with any exception to the nondisplacement requirements, a successor contractor bears the burden of showing how the exception applies. For example, a successor contractor would have to demonstrate that an employee it has employed for at least 3 months will be discharged if a position on the contract is not offered because the employee's work on another contract has expired and there are no other openings for which the employee is qualified. A successor contractor could not claim this exception to reemploy an employee who was already terminated or laid off because such a person has not been employed for the 3 months preceding the commencement of the successor contract. However, an employee would still be considered to be employed during a period of leave, such as vacation or sick leave, or a similar short-term absence.

Under proposed § 9.12(c)(3), the contractor or subcontractor would not be required to offer employment to any employee of the predecessor contractor who is not a service employee. Typically, this exception would apply to a person who is a managerial or supervisory employee on the predecessor contract. The successor contractor would be required to presume that all persons appearing on the list required by § 9.12(e), or who have demonstrated they should have been included on the list were service employees under a predecessor's Federal service contract, absent an ability to demonstrate a reasonable belief to the contrary, based upon credible information provided by a knowledgeable source such as the predecessor contractor, the employee, or the contracting agency. Information regarding the general business practices of the predecessor contractor or the industry would not be sufficient for purposes of the exception.

The Department proposed in § 9.12(c)(4) that a contractor or subcontractor would not be required to offer employment to any employee of the predecessor contractor whom the contractor or any of its subcontractors reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job. The successor contractor would be required to presume that all employees working under the predecessor contract in the last month of performance performed suitable work on the contract, absent an ability to demonstrate a reasonable belief to the contrary based upon credible

information provided by a knowledgeable source such as the predecessor contractor, the local supervisor, the employee, or the contracting agency. A successor contractor could demonstrate its reasonable belief that the employee in fact failed to perform suitably on the predecessor contract through evidence of disciplinary action taken for poor performance or evidence directly from the contracting agency that the particular employee did not perform suitably. Similarly, a successor contractor could use performance appraisal information in determining whether an employee failed to perform suitably on the job; however, the Department notes that this does not require a predecessor contractor to provide performance information. Information regarding the general performance of the predecessor contractor would not be sufficient for purposes of this exemption. The Department sought comments as to whether there should be any requirement that the information supporting the contractor's or subcontractor's reasonable belief that an employee of the predecessor contractor had failed to perform suitably on the job be in writing and relatively contemporaneous with the employee's past performance.

Under proposed § 9.12(c)(5), a contractor or subcontractor is not required to offer employment to any employee hired to work under a predecessor's Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employee was not deployed in a manner that was designed to avoid the purposes of this part. The successor contractor is required to presume that all employees hired to work under a predecessor's Federal service contract did not work on one or more nonfederal service contracts as part of a single job, unless the successor contractor can demonstrate a reasonable belief to the contrary based upon credible information provided by a knowledgeable source such as the predecessor contractor, the local supervisor, the employee, or the contracting agency. Information regarding the general business practices of the predecessor contractor or the industry would not be sufficient for purposes of this exception. For instance, claims from several employees stating that a janitorial contractor reassigned its janitorial workers who previously worked exclusively in a Federal building to both Federal and private clients as part of a single job may indicate that the predecessor deployed workers to avoid the requirements of the nondisplacement provisions. Conversely, where the employees on the predecessor contract were deployed to Federal and other buildings as part of their job, the successor contractor would not be required to offer employment to the workers. Knowledge that contractors generally deploy workers to both Federal and other clients would not be sufficient for the successor contractor to claim the exception because such general practices may not have been observed on the particular predecessor contract.

The Department received various comments on proposed § 9.12(c). A Navy Labor Advisor requested that the final rule at § 9.12(c)(2) include language concerning the eligibility of employees on leave. The HR Policy Association commented that proposed § 9.12(c)(3) is illogical because if a successor employer determines that certain positions will be supervisory or managerial positions, it should not be obligated to hire predecessor employees into these non-service positions, even if the predecessor employer elected to treat the positions as service employee positions. The Chamber commented that the Department should eliminate the presumption that all employees included on the list by the predecessor and competitor contractor are ''service employees''. The Chamber suggested that if the Department maintains the presumption that all workers are service employees, then the evidentiary standard for rebutting that presumption should be changed to require only that the successor contractor have a good faith belief that the employee is not a service employee and that the Department should provide additional guidance and allow the successor contractor to use information regarding general business practices.

The Chamber also commented that the requirement that the successor contractor presume the predecessor contractor's employees would be terminated, absent a reasonable belief to the contrary based on credible evidence from a knowledgeable source, involved evidentiary standards that are too difficult to meet because a successor contractor does not necessarily have access to the predecessor contractor or employees. The Chamber suggested that the final rule eliminate the presumption that all employees will be terminated as a result of the award of a successor contract and provide additional guidance regarding what type of evidence will support this exception.

The PSC commented that ''unsuitable past performance'' is inadequately defined in the proposed rule and will result in confusion and litigation. The PSC also noted that the rule does not provide sufficient guidance regarding the ''evidence'' on which a successor contractor may rely to determine that a prospective employee's performance is unsuitable. The PSC also felt that since an employee's poor performance is often not reflected in any formal employment action, a formal record of ''disciplinary action'' should not be among the criteria that a contractor must demonstrate to justify employment decisions affecting unsuitable incumbent employees. The PSC stated that the proposed rule provides little guidance on what information the predecessor contractor must provide to the successor contractor concerning the performance of employees. The SBA Office of Advocacy stated that successor contractors may not receive information about employee performance because seniority lists do not contain performance reviews, and should the predecessor contractor provide employee information, it may not be reliable since the predecessor contractor may have lost the contract due to its inability to manage personnel. The SHRM commented that the predecessor contractor may not maintain, or provide, thorough employment records, and recommended that when this occurs, the successor contractor notify the contracting agency to be relieved of its obligation to offer a right of first refusal.

The PSC commented, and TechAmerica agreed, that an employee's prior work experience is not necessarily the sole qualification for the job, and recommended that the successor contractor be allowed to not make an offer of employment to those of the predecessor's employees who are ''undesirable'' for reasons other than past instances of unsuitable performance. The PSC opined that few contractors would be willing to try to satisfy the proposed rule's standard for excusing a successor contractor from the obligation to offer a predecessor's employee a position on the contract. This commenter recommended that, should the Department retain the presumption that an employee's prior experience on the predecessor contract makes the employee qualified for the successor contract, the time period should be expanded to six months of continuous employment on the predecessor contract. The SHRM recommended that the final rule relieve a successor contractor of any requirement to hire any of the predecessor's employees in any situation where a predecessor contractor

retains 10% or more of its workforce employed during the 90 days preceding the completion of the Federal contract because that may indicate that the predecessor has moved its more experienced and valuable employees off the contract. Similarly, the SBA Office of Advocacy and the PSC expressed concern that, under the proposed section, a predecessor contractor might keep its best performing employees and leave the successor contractor with less qualified employees. These commenters argued that the standard for establishing non-qualification should be changed to a good faith belief by the successor contractor. The Chamber suggested that the presumption of qualification be eliminated from the proposal because it provides an incentive for the predecessor contractor to ''dump'' low-performing employees from other contracts onto the contract it is about to lose. The Chamber further commented that the proposed section did not provide the successor contractor with access to the information required to disprove qualification. The PSC and TechAmerica added that predecessor contractors would not want to provide employee evaluations to successor contractors because of privacy and legal concerns. The SBA Office of Advocacy and the PSC recommended that the final rule contain a safe harbor provision for those predecessor contractors who provide employee information due to the high litigation risk disclosure produces. TechAmerica also requested a safe harbor provision to protect the successor contractor from litigation brought by employees of the predecessor contractor.

The AFL–CIO stated that the final rule should require a successor contractor to support its belief in an employee's unsuitable performance with written evidence of poor performance created contemporaneously with the relied-upon disciplinary action. The SEIU and Change to Win suggested that the final regulation require a successor contractor to support its belief in an employee's unsuitable performance with written evidence of poor performance created contemporaneously with the relied-upon disciplinary action, that any poor past performance relied on be sufficient under the contractor's own policies to justify termination, and that the poor performance be equivalent to ''just or proper cause'' as those terms are used under collective bargaining agreements. The SEIU and Change to Win agreed with the AFL–CIO's suggestion that the final rule require a successor contractor to show that an employee engaged in a ''terminable offense'' as a basis for denying to extend the employee a job offer on the contract.

Regarding the exception from the requirement to offer employment to an employee who was hired to work on the predecessor's contract and one or more nonfederal jobs as part of a single job, the Chamber suggested that the final rule eliminate the presumption that no employee was hired for more than the contract at issue, or at least change the evidentiary standard for rebutting that presumption to require only that the successor contractor have a good faith belief that the employee was employed on one or more nonfederal jobs as part of a single job. The Chamber requested additional guidance on what type of evidence will support this exception. The SEIU and Change to Win commented that it would defeat the intent of the Executive Order if the requirement to offer employment was not applied to employees who worked relatively less time on nonfederal contracts and who would face layoff because of the award of the contract to another contractor. They suggested that the final regulations provide that an employee who spends at least 59% of his or her time working on a Federal service contract and who would face layoff as a result of the contract change should not be excluded from coverage under Section 3(e) of the Executive Order.

The Department disagrees with the Chamber that the evidentiary standard required to establish the exception in proposed § 9.12(c)(1) is too difficult to meet. As the proposal indicated, credible information may be obtained from the predecessor contractor, the employee, or the contracting agency. Therefore no changes have been made to proposed § 9.12(c)(1). The Department declines the Navy Labor Advisor's request that § 9.12(c)(2) include language concerning the eligibility of employees on leave as not necessary. Such employees would clearly still be employed by the predecessor while on leave. Therefore, § 9.12(c)(2) is also adopted as proposed.

After careful review of the comments, the Department has also decided to adopt § 9.12(c)(3) without change. It is the Department's conclusion that the provision, as proposed, suffices to ensure job protection for eligible employees of the successor contractor. Under the SCA, all employees performing work on the contract are considered service employees unless they are defined as executive, administrative, or professional employees exempt under the Fair Labor Standards Act, 29 U.S.C. 203 *et seq.,* and its regulation at 29 CFR Part 541. Also under the SCA, the contractor already bears the burden to show that the workers working on a Federal service contract are not service employees.

The Department is not convinced that evidence of past poor performance would be difficult to obtain. The Department's experience from Executive Order 12933 showed that successor contractors were able to obtain information on the predecessor's employees' job performance. The Department does not agree that, under the proposed rule, predecessor contractors will be encouraged to ''dump'' unsuitable employees onto expiring contracts, nor that the inclusion of a ''safe harbor'' provision in the regulation is appropriate or authorized by the Executive Order. The Department also does not agree that a different standard from what was proposed is needed for determining a service employee's eligibility for an offer of employment from the successor contractor. Neither lengthening the period of employment prior to the end of the predecessor contract, nor eliminating the requirement for an offer of employment when the predecessor retains a certain percentage of its workforce, would address the stated concern that the predecessor contractor may retain some of its most qualified workforce. The Department also notes that where the predecessor contractor retains some, but not all, of the workforce employed on the contract during the last month of the contract, those remaining employees will likely have more experience with the contract and contracting agency than new hires recruited by the successor contractor for the purpose of filling the contract requirements.

In response to the comments, the Department has modified the exception for unsuitable performance in § 9.12(c)(4) to include the requirement that a successor contractor must support its belief that an employee has exhibited unsuitable job performance with written credible evidence provided by a knowledgeable source to enhance the reliability of such evidence. The final rule, however, does not require that such written evidence be contemporaneous or concern a workplace offense justifying termination because it is the Department's conclusion that such requirements would be overly restrictive.

Regarding the exception from the requirement to offer employment to an employee who was hired to work on the predecessor's contract and one or more nonfederal service contracts as part of a single job, the Department notes that

this exception is required by the Executive Order and would only apply to workers of a predecessor contractor who were deployed on Federal and nonfederal service contracts. It is the Department's conclusion that generally determining eligibility for this exception should not be difficult and the Department therefore has decided to adopt § 9.12(c)(5) without change.

Section 9.12(d) Reduced Staffing

Proposed § 9.12(d) addressed the provision in paragraph (a) of Executive Order 13495's contract clause that allows the successor contractor to reduce staffing. 74 FR 6104 (Feb. 4, 2009).

Proposed § 9.12(d)(1)(i) allowed the contractor or subcontractor to determine the number of employees necessary for efficient performance of the contract and, for bona fide staffing or work assignment reasons, to elect to employ fewer employees than the predecessor contractor employed in performance of the work. Thus, the successor contractor would not be required to offer employment on the contract to all employees on the predecessor contract, but would be required to offer employment only to the number of eligible employees the successor believes necessary to meet its anticipated staffing pattern. Where a successor contractor does not offer employment to all the predecessor contract employees, the obligation to offer employment would continue for 3 months after the successor contractor's first date of performance on the contract. In § 9.12(d)(1)(ii), the Department proposed that if a successor contractor did not offer employment to all the predecessor contractor's service employees, the obligation to offer employment would continue for 90 days after the successor contractor's first date of performance on the contract. The successor contractor's obligation under this part would end when all of the predecessor contract employees received a bona fide job offer or the 90-day window of obligation expired. The Department sought comments on this issue.

Proposed § 9.12(d)(2) allowed the contractor, subject to provisions of this part and other applicable restrictions (including non-discrimination laws and regulations), to determine to which employees it will offer employment. Proposed § 9.12(d)(3) allowed, in some cases, a successor contractor to reconfigure the staffing pattern to increase the number of persons employed in some positions while decreasing the number of employees in others, provided the contractor examined the qualifications of each employee so as to minimize displacement. Consistent with proposed § 9.1(b), this exception should not be construed to permit a contractor or subcontractor to fail to comply with any provision of any Executive Order, regulation, or law of the United States; therefore, a contractor could not use this exemption to justify unlawful discrimination against any worker. While the WHD would not make compliance determinations regarding Federal contractors' compliance with nondiscrimination requirements administered by other regulatory agencies, a finding by the Department's Office of Federal Contract Compliance Programs, another agency, or a court that a contractor has unlawfully discriminated against a worker would be considered in determining whether the discriminatory action has also violated the nondisplacement requirements. Under the proposal, the successor contractor's obligation would end when all of the predecessor contract employees have received a bona fide job offer or the 90-day obligation period expires. The proposed regulation provided several examples to demonstrate the principle.

The Chamber commented that the requirement to provide a right of first refusal should cease once the contract has started, since it would otherwise create an unnecessary regulatory burden. The SEIU and Change to Win took the opposite position on this issue, stating that the 90-day limit should not be included in the final rule. They asserted that to require that the predecessor's employees be offered employment at any time there is an opening for which they are qualified is consistent with one of the purposes of the Executive Order, which is to provide an experienced and trained workforce. The Department notes that the proposal struck a balance with the obligation to provide the predecessor's employees with a right of first refusal of employment and successor contractor's need to address workforce needs during the contract term. It is the Department's conclusion that to require successor contractors to make offers to predecessor employees for subsequently vacant positions more than 90 days after the successor's first day of performance on the contract would be impractical and unduly burdensome. Ninety days was selected as a reasonable period for continuing to impose an obligation to offer a right of first refusal in order to ensure that any necessary staffing adjustments during the start-up period would be covered while at the same time discouraging attempts to manipulate the starting workforce. No other comments were received for proposed § 9.12(d) and it is adopted as proposed.

Section 9.12(e) Contract Obligations Near End of Contract Performance

Proposed § 9.12(e) specified the predecessor contractor's obligations near the end of the contract—not less than 10 days before completion of the contract—to furnish the Contracting Officer with a certified list of the names of all service employees working under the contract and its subcontracts during the last month of contract performance, including their anniversary dates of employment with either the predecessor contractor or any subcontractors. The proposal noted that the contractor may use the seniority list submitted to satisfy the requirements of the SCA contract clause specified at 29 CFR 4.6(l)(2) to meet this provision. The earlier version of part 9 implementing Executive Order 12933 included a similar provision that did not specifically state that the single list could be used to satisfy the requirements of both parts 4 and 9; however, the Department stated that specifying this option in the regulations may help clarify that duplication of effort is not required to comply with this requirement of Executive Order 13495. The earlier version of part 9 also required that the list of employees be furnished 60 days before completion of the contract. The current proposal reflected the time frame used in the current Executive Order and is required under 29 CFR 4.6(l)(2). In his comments, a Navy Labor Advisor suggested that the Department require the predecessor to provide two lists, one without dates of employment, in an effort to combat seniority-based discrimination. The Chamber requested that the predecessor contractor be required to note which employees it planned to keep in its employment. The PSC commented that the predecessor contractor should be required to identify the employees covered by the SCA, the relevant labor category and job duties, and current contact information for each covered service employee, as this is basic information that any successor contractor would require to make employment decisions, and that the predecessor contractor certify the factual accuracy and completeness of this list. As the employee list is already a requirement of Federal service contractors under the SCA, the Department declines to make changes to its contents.

Several commenters also expressed concern that the time frames provided

in this section are too restrictive and would not give successor contractors the time necessary to evaluate and hire workers prior to contract performance. TechAmerica suggested that the predecessor provide the list earlier in the procurement process than 10 days before the completion of the contract to ease the burden on successors. Afognak and the SHRM recommended that the list be provided at least 30 days before performance is to commence. In making this recommendation, Afognak mentioned the particular complexities of classified contracts. The U.S. Air Force Installation and Sourcing Division suggested that the time frame be expanded to 20 days, whereas the SBA Office of Advocacy recommended that the list of employees be provided to the successor contractor at the time of the contract solicitation.

The requirement that the predecessor contractor furnish the Contracting Officer with the certified list not less than 10 days before completion of the contract is established in the Executive Order, and the Department therefore believes that it lacks authority to modify that time frame. However, in response to the comments received concerning this issue and the practical considerations they raise, the Department has modified § 9.12(e) to require the predecessor contractor to provide a certified seniority list to the Contracting Officer not less than 30 days before completion of the contract. Where changes to the workforce are made after the submission of the list provided 30 days before completion of the contract, the predecessor contractor would be required to furnish an updated certified list to the Contracting Officer not less than 10 days before completion of the contract. Requiring that a list be provided 30 days before completion of the contract will provide successor contractors with additional time to review employment needs and make employment offers to incumbent employees, which should promote the Executive Order's goal of economy and efficiency. The Department anticipates that a large portion of contractors will not make changes to their workforce in the final month of contract performance and will therefore not be required to submit a second certified list; in those cases where the submission of a second list is necessary, the Department anticipates that differences between the two certified lists will usually be minimal. The Department encourages contracting agencies to modify their existing service contracts (and suggests that relevant subcontracts likewise be modified) so that the requirement to provide a preliminary seniority list not less than 30 days before completion of the contract would apply to existing contracts.

Section 9.12(f) Recordkeeping

Proposed § 9.12(f) established record keeping requirements for contractors under Executive Order 13495. Proposed § 9.12(f)(1) clarified that no particular order or form of records for contractors is prescribed, and the recordkeeping requirements apply to all records regardless of their format (e.g., paper or electronic). A contractor is allowed to use records developed for any purpose to satisfy the requirements of part 9, provided the records otherwise meet the requirements and purposes of this part.

Proposed § 9.12(f)(2) specified the records contractors must maintain, including copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, the names of the employees from the predecessor contract to whom an offer was made, any written record that forms the basis for any exclusion or exemption claimed under this part, the employee list provided to the contracting agency, and the employee list received from the contracting agency. In addition, as proposed every contractor who makes retroactive payment of wages or compensation under the supervision of the WHD pursuant to proposed § 9.24(b) will be required to record and preserve for three years in the pay records the amount, the period covered, and the date of payment to each employee, and to report to WHD each such payment on a receipt form authorized by the WHD, with a copy delivered to each employee. Contracting agency and WHD staff will use these records in determining a contractor's compliance and the propriety of any further sanctions. No comments were received on § 9.12(f), and it is adopted as proposed.

Section 9.12(g) Investigations

Proposed § 9.12(g) outlined the contractor's obligations to cooperate during any investigation to determine compliance with part 9 and to not discriminate against any person because such person has cooperated in an investigation or proceeding under part 9 or has attempted to exercise any rights afforded under part 9. As proposed, this obligation to cooperate with investigations is not limited to investigations of the contractor's own actions, but also includes investigations related to other contractors (*e.g.,* predecessor and subsequent contractors) and subcontractors. No comments were received on this provision and it is adopted as proposed.

Subpart C—Enforcement

Proposed subpart C addressed complaints, informal resolution attempts, investigations, and remedies and penalties for violations.

Section 9.21 Complaints

Under proposed § 9.21(a), any former employee of the predecessor contractor or authorized employee representative who believes that the successor contractor violated the provisions of this part may file a complaint with the Contracting Officer of the appropriate Federal agency within 120 days of the alleged violation. Proposed § 9.21(b) allowed a complainant to file the complaint with the WHD if a complainant has not been able to file a complaint with the Contracting Officer prior to the 120-day deadline or has filed a complaint with the Contracting Officer but has not received a report within 30 days of filing the complaint. It also stated that a complaint must be filed with the WHD within 180 days of the alleged violation.

A Navy Labor Advisor commented that the Department has no basis for involving contracting agencies in the receipt or resolution of complaints and that the Department has exceeded its authority by assigning such duties to the agencies. He recommended that the complaints be sent directly to the WHD because of the Contracting Officers' lack of training and expertise specific to enforcement of the Executive Order. He suggested omitting any reference to the Contracting Officer as the principal point of contact for filing complaints.

The SEIU and Change to Win likewise suggested that complaints be sent directly to the WHD without having to first file a complaint with the Contracting Officer. These commenters also suggested that the final rule define ''authorized representative'' to include a labor union representing the affected employees. The SEIU and Change to Win added that since the proposed regulations stated that only a complainant can file a complaint with the WHD, there is a question of whether an authorized representative or labor union could file a complaint. The SEIU and Change to Win and the AFL–CIO requested that the final rule at § 9.21 allow employees and their collectively bargained representatives to file a complaint against a contracting agency that fails to provide notice to incumbent

employees of a right to an offer of employment, as required by proposed § 9.11(b), or fails to provide notice of a decision to exempt a contract from the nondisplacement requirements, as required by proposed § 9.4(d)(2). These commenters also requested that the final rule specify that incumbent as well as former employees may file complaints because these issues may arise prior to the award of the successor contract. The AFL–CIO asked that the final rule remove the words ''if the complainant has not been able to timely file the complaint with the Contracting Officer'' to clarify that a complainant may choose to file a complaint with the WHD rather than with the Contracting Officer without condition.

After consideration, the Department has decided to change the language of proposed § 9.21 to remove the need to file a complaint with the Contracting Officer. Instead, an employee or authorized representative may file a complaint directly with the WHD, and the contracting agency will be responsible for forwarding certain information that the Department must have in order to make a determination of compliance, when such information is requested by the Department. It is the Department's conclusion that the proposed method for receiving and processing complaints allows compliance concerns to be resolved as expeditiously as possible without undue burdens on all parties. For these reasons, the Department also agrees to remove the words ''if the complainant has not been able to timely file the complaint with the Contracting Officer'' and all references to the Contracting Officer as the principal point of contact for filing complaints. The Department also concludes that § 9.21 as proposed provides sufficient guidance on filing complaints directly with the WHD.

The final rule adopts proposed § 9.21 with changes that allow an employee to file a complaint directly with the WHD ''within 120 days from the first date of contract performance. Since the contractor's obligation to offer employment continues 90 days after the start of performance on the contract, we believe 30 days after the end of the contractor's obligation is appropriate, and will allow for the most practical implementation of the rule. In addition, the final rule replaces the term ''former employee'' with the term ''employee'' to allow for possible circumstances when an incumbent employee could file a complaint. The Department declines to alter the term ''authorized representative'' because the term encompasses an employee's collectively bargained representative. The Department also declines to add language allowing the filing of a complaint under the Order against a contracting agency because the Executive Order does not furnish the Department with such authority.

Section 9.22 Wage and Hour Division Conciliation

Proposed § 9.22 established the informal complaint resolution process for complaints referred to the WHD. Specifically, after obtaining the necessary information from the Contracting Officer regarding the alleged violations, the WHD could contact the successor contractor about the complaint and attempt to conciliate and reach a resolution that is consistent with the requirements of this part. Other than comments that the Contracting Officer should not be involved in enforcement of the final rule, which are addressed elsewhere in this preamble, no comments were received on proposed § 9.22. It is adopted in the final rule without revision.

Section 9.23 Wage and Hour Division Investigation

Proposed § 9.23 outlined the authority for the WHD to investigate complaints under Part 9. Proposed § 9.23(a) addressed initial investigations and provided that the Administrator may initiate an investigation either as the result of the unsuccessful conciliation of a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator would be able to inspect the records of the predecessor and successor contractors (and make copies or transcriptions thereof), question the predecessor and successor contractors and any employees of these contractors, and require the production of any documentary or other evidence deemed necessary to determine whether a violation of this part (including conduct warranting imposition of ineligibility sanctions pursuant to § 9.24(d)) has occurred. Proposed § 9.23(b) addressed subsequent investigations and allowed the Administrator to conduct a new investigation or issue a new determination if the Administrator concluded circumstances warrant the additional action, such as where the proceedings before an ALJ reveal that there may have been violations with respect to other employees of the contractor, where imposition of ineligibility sanctions is appropriate, or where the contractor failed to comply with an order of the Secretary. No comments were received on proposed § 9.23, and it is adopted without change.

Section 9.24 Remedies and Sanctions for Violations of This Part

This proposed section outlined the appropriate remedies and sanctions for violations of the final rule. Proposed § 9.24(a) stated that the Secretary shall have the authority to issue orders prescribing appropriate remedies, including, but not limited to, requiring the contractor to offer employment to employees from the predecessor contract and the payment of wages lost. Proposed § 9.24(b) provided that, in addition to satisfying any costs imposed by an administrative order under proposed §§ 9.34(j) or 9.35(d), a contractor that violates part 9 would be required to take appropriate action to abate the violation, which could include hiring the affected employee(s) in a position on the contract for which the employee is qualified, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Proposed § 9.24(c) concerned the withholding of contract funds for non-compliance. Proposed § 9.24(c)(1) provided that, after an investigation and a determination that lost wages or other monetary relief is due, the Administrator could direct that accrued payments due on either the contract or any other contract between the contractor and the Government be withheld as necessary to pay the moneys due; and that, upon final order of the Secretary, the Administrator could direct that withheld funds be transferred to the Department for disbursement. Proposed § 9.24(c)(2) provided for the suspension of the payment of funds if the Contracting Officer or the Secretary finds that the predecessor contractor has failed to provide the required list of employees working under the contract as required by proposed § 9.12(e). Proposed § 9.24(d) provided for debarment from Federal contract work for up to three years for noncompliance with any order of the Secretary or for willful or aggravated violations of the regulations in this part.

The proposed withholding provisions mirror the withholding standards of other labor standards laws such as the Davis-Bacon Act, 40 U.S.C. 3141 *et seq.,* and the SCA. Those acts also provide for debarment from Federal contract work under certain circumstances. No comments were received on § 9.24 and it is implemented in the final rule without revisions.

Subpart D—Administrator's Determination, Mediation, and Administrative Proceedings

Proposed subpart D addressed informal and formal proceedings through which to determine compliance with the requirements of part 9 and the resolution of disputes. Specifically, it addressed the authority of the Administrator, Office of Administrative Law Judges (ALJ), and the Administrative Review Board (ARB); it also clarified the effects of various notices and filings. A number of commenters addressed matters concerning proposed language in subpart D. As a preliminary matter, the SEIU and the AFL–CIO asserted that the Department should provide administrative review of an agency decision to exempt a contract from coverage of the Executive Order. The SBA Office of Advocacy forwarded a suggestion from an attorney that the Department enforce penalties against predecessor employers who fail to provide a seniority list. The Department has decided not to add provisions for the administrative review of agency exemption decisions or the enforcement of penalties against predecessor contractors for failure to provide a seniority list because the Executive Order does not confer such authority on the Department. *See also* discussion at § 9.4(d)(5). The Department notes that proposed § 9.24(c) authorizes the suspension of contract funds under such circumstances and agrees that the Department should endeavor to pursue permissible enforcement action to remedy such violations.

Section 9.31 Determination of the Administrator

Proposed § 9.31(a) provided that when an investigation is completed without resolution, the Administrator will issue a written determination of whether a violation occurred. Under the proposal, the written determination shall contain a statement of the investigation findings that shall address the appropriate relief and the issue of ineligibility sanctions where appropriate. Proposed § 9.31(b) required notice of the determination to be sent by certified mail to the parties. Under proposed § 9.31(b)(1), for instances where there are relevant facts in dispute, the notice of determination becomes the final order of the Secretary that is not appealable in any administrative or judicial proceeding unless a request for an ALJ hearing is filed within 20 days. Under proposed § 9.31(b)(2), for instances where no relevant facts are in dispute, the notice of determination becomes the final order of the Secretary and is not appealable in any administrative or judicial proceeding unless a petition for review is filed within 20 days with the ARB.

The SEIU and Change to Win noted that the proposed rules do not specify a time period in which the Administrator must issue a determination. These commenters asserted that the Administrator should be required to issue a determination within 60 days of a complaint being filed with the Wage and Hour Division because ''[i]f a service employee has been wrongfully denied a job, the need by the employee to receive a prompt determination from the Administrator is of obvious importance'' and a 60-day time period would give the Administrator ''ample time to weigh the evidence and draft a decision while not placing an undue burden on the Wage and Hour Division'' and ''provid[ing] an affected employee with a relatively timely resolution of his or her grievance.''

After careful review, the Department has decided not to add the 60-day time limit for the Administrator's determinations. Although the Department supports the prompt investigation of complaints, followed by the efficient rendering of decisions by the Administrator, a uniform time limit could adversely affect complex and fact-intensive investigations by the Wage and Hour Division. Section 9.31 therefore is adopted as proposed.

Section 9.32 Requesting Appeals

Proposed § 9.32 addressed appeals of the Department's administrative decisions. Under proposed § 9.32(a) any party desiring review of the determination of the Administrator, including judicial review, must file a request for an ALJ hearing or petition for review by the ARB. Proposed § 9.32(b) provided procedures for requesting review of the Administrator's determination. Proposed § 9.32(b)(1) provided the process and requirements for filing a request for an ALJ hearing. Under the proposal, within 20 days of the issuance of the Administrator's determination any aggrieved party may file a request for an ALJ hearing, under the following conditions: The complainant or any other interested party may request a hearing where the Administrator determines that there is no basis for a finding that a contractor has committed violation(s); the complainant or any other interested party may request a hearing where the complainant or other interested party believes that the Administrator has ordered inadequate monetary relief; and the contractor or any other interested party may request a hearing where the Administrator determines that the contractor has committed violation(s). Proposed § 9.31(b)(2) provided the process and requirements for filing a petition for review with the ARB. Under the proposal, any aggrieved party may seek review by the ARB of a determination of the Administrator in which there were no relevant facts in dispute, or of an ALJ's decision, within 20 days of the date of the determination or decision.

One commenter addressed the proposed language in this section. The PSC considered the language to be overbroad where it permits ''[a]ny aggrieved party'' or ''any other interested party'' to seek review, rather than limiting that right to ''the actual displaced employee.'' The PSC stated that ''the rule invites parasitic litigation by employee groups or activists'' and that, as a result, successor contractors will have to spend time and resources defending against claims ''even when the successors have valid, fully documented reasons for declining to offer employment.'' This commenter argued that these increased costs to successor contractors may be passed on to the taxpayer and also result in fewer contractors bidding on service contracts to ''avoid the hassle of displacement decisions [and] * * * the attendant cost and administrative burden.''

After carefully considering the comment, the Department has decided to adopt the proposed language without change. While sympathetic to potential litigation costs of contractors, the Department does not consider the language that permits aggrieved and interested parties to seek review to be overbroad. The Department also notes that the Executive Order does not contemplate a private right of action, which should reduce the potential litigation burden on successor contractors.

Section 9.33 Mediation

Proposed § 9.33 provided for the use of settlement judges to mediate settlement negotiations when efforts to resolve disputes have failed. Consistent with section 6(b) of Executive Order 13495, proposed § 9.33(a) generally encouraged parties to resolve disputes in accordance with the conciliation procedures set forth at § 9.22 or, where such efforts fail, to utilize settlement judges to mediate settlement negotiations pursuant to 29 CFR 18.9, when those provisions apply. At any time after commencement of a proceeding, the parties jointly could

move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement disposing of the proceeding. Proposed § 9.33(b) established a procedure for appointing a settlement judge to mediate cases scheduled with the Office of Administrative Law Judgers (OALJ). No comments were received on § 9.33, and it is adopted without change.

Section 9.34 Administrative Law Judge Hearings

Proposed § 9.34 provided procedures and rules applicable to ALJ hearings. Proposed § 9.34(a) provided for the OALJ to hear and decide appeals concerning questions of law and fact from determinations of the Administrator. Under the proposal, the ALJ would act fully as the authorized representative of the Secretary subject to certain limits. Specifically, the proposed rule would bar the ALJ from passing on the validity of any provision of part 9 and from awarding attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act (EAJA), as amended. 5 U.S.C. 504. The proposal stated that the provisions of the EAJA would not apply to any proceeding under this part because such proceedings would not be required by an underlying statute to be determined on the record after an opportunity for an agency hearing.

Under proposed § 9.34(b), absent a stay to attempt settlement, the ALJ shall notify the parties and any representatives within 15 calendar days following receipt of the request for hearing of the day, time, and place for hearing, which is to be held not more than 60 days from the date of receipt of the hearing request. Proposed § 9.34(c) allowed an ALJ to dismiss challenges for the failure to participate.

Proposed § 9.34(d) allowed the Administrator to participate as a party or as amicus curiae at any time in the proceedings; it also allowed the Administrator to petition for review of an ALJ decision in a case in which the Administrator has not previously participated, and added that the Administrator would participate as a party in any proceeding in which the Administrator has found any violation of this part, except where the challenge only concerns the amount of monetary relief. Under proposed § 9.34(e), a Federal agency that is interested in a proceeding may participate as amicus curiae at any time in the proceedings.

Proposed § 9.34(f) required that copies of the request for hearing and documents filed in all cases, whether or not the Administrator is participating, shall be sent to the Department's Administrator, WHD, and the Associate Solicitor, Division of Fair Labor Standards.

Proposed § 9.34(g) established, with certain exceptions, that the rules of practice and procedure for administrative hearings before the OALJ at 29 CFR part 18, subpart A shall apply to administrative proceedings under this part 9. However, it also stated that the Rules of Evidence at 29 CFR part 18, subpart B, were inapplicable and provided that part 9 would be controlling to the extent it provides any rules of special application that may be inconsistent with the rules in part 18, subpart A.

Proposed § 9.34(h) required ALJ decisions (containing appropriate findings, conclusions, and an order) to be issued within 60 days after completion of the proceeding. Proposed § 9.34(i) allowed the ALJ, upon the issuance of a decision that a violation has occurred, to order appropriate relief, which could include that the successor contractor hire the affected employee(s) in a position on the contract for which the employee is qualified, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Under the proposal, if the Administrator has sought ineligibility sanctions, the order would also be required to address whether debarment is appropriate. Proposed § 9.34(j) authorized the ALJ to assess against the contractor for a violation of this part an amount equal to the employees' costs and expenses (not including attorney fees). This amount would be awarded in addition to any unpaid wages or other relief due. Proposed § 9.34(k) stated that the decision of the ALJ shall become the final order of the Secretary, unless a petition for review is timely filed with the ARB. No comments were received on § 9.34 and it is implemented in the final rule without change.

Section 9.35 Administrative Review Board Proceedings

Proposed § 9.35 provided procedures and rules applicable to ARB appeals of an ALJ's decision or of an Administrator's determination wherein no facts are at issue. Proposed § 9.35(a)(1) provided that the ARB shall act as the authorized representative of the Secretary and shall act fully and finally on behalf of the Secretary concerning such matters. Proposed § 9.35(a)(2) added that the ARB shall review the entire record before it on the basis of substantial evidence and also placed limits on the scope of the ARB's review. Specifically, the proposed rule barred the ARB from passing on the validity of any provision of part 9, accepting new evidence, or awarding attorney fees and/or other litigation expenses under the provisions of EAJA. Proposed § 9.35(b) required the ARB to issue final decisions within 90 days of the receipt of the petition for review and to serve the decisions upon all parties by mail to the last known address and upon the Chief ALJ in cases involving an appeal from an ALJ's decision. Proposed § 9.35(c) provided that if the ARB concluded that the contractor had violated this part, its final order should order action to abate the violation, which could include hiring each affected employee in a position on the contract for which the employee is qualified, together with compensation (including lost wages), terms, conditions, and privileges of that employment. If the Administrator sought ineligibility sanctions, the proposed rule stated that the ARB's order should address whether debarment is appropriate. Proposed § 9.35(d) authorized the ARB to assess against contractors, for a violation of this part, a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the aggrieved employee(s) in the proceeding. This amount would be awarded in addition to any unpaid wages or other relief due under § 9.24(b) of this part. Proposed § 9.35(e) declared that the decision of the ARB shall become the final order of the Secretary. No comments were received on this provision and no revisions have been made. The heading in the proposed table of comments for § 9.35 has been corrected to state ''Administrative Review Board Proceedings'' rather than ''Administrative Review Board Hearings.''

Appendix A to Part 9

Proposed Appendix A to part 9 contained the text of the contract clause required by proposed § 9.11(a). The Department received several comments concerning Appendix A. The PSC asserted that the contents of proposed Appendix A should be omitted consistent with its suggestion that the final rule should not include a contract clause but incorporate by reference the contract clause that will be promulgated in the FAR. A Navy Labor Advisor objected to paragraph (c) of the contract clause in proposed Appendix A that required the predecessor contractor to provide the seniority list to the Contracting Officer at least 10 days before the contract's end because that period would not allow sufficient time for compliance by all parties. The AFL–CIO requested that paragraphs (f) through (h) of the contract clause in

proposed Appendix A be amended to conform to their comments to the provisions of the proposed rule concerning of the contents of the contract clause. In particular, the AFL–CIO suggested that the text remove any reference to oral offers of employment in section (g)(1) of the contract clause. TechAmerica commented that the requirements in paragraphs (a) and (b) of the contract clause in proposed Appendix A would result in eliminating those small businesses that do not have sufficient resources to replace their workforce with the workforce on the predecessor contract.

The Department disagrees with the PSC's suggestion that the final rule should omit any contract clause and, instead, incorporate by reference the contract clause that will appear in the FAR. The Department concludes that its charge to implement and enforce the requirements of the Executive Order includes providing the contract clause. The Department will work with the FARC concerning the implementation of the contract clause in the FAR. The comments of the Navy Labor Advisor and the AFL–CIO that repeat comments they made concerning the requirements of the proposed rule to provide a certified list of employees and the method for making an employment offer are addressed in subpart B of this preamble. TechAmerica's comment, in effect, challenges the contents of the Executive Order, and is beyond the purview of this rulemaking. Paragraphs (a) and (b) of the contract clause restate word for word the text of section 5(a) and (b) of Executive Order 13495. Appendix A has been modified for editorial and organizational purposes and to reflect changes made to the proposed rule.

Appendix B to Part 9

Proposed Appendix B contained the text for the notice that contracting agencies would be required to provide to service employees on covered contracts that have been awarded to a successor contractor. The proposed rule stated that the Department intended to make the text of Appendix B, should it appear in the final rule, available to contracting agencies on the Internet in a poster format. The proposal allowed the text of the notice to be provided to affected employees electronically in addition to or as an alternative to posting. As mentioned in the discussion of § 9.11(b), the final rule provides that the Contracting Officer will ensure that the predecessor contractor provides written notice of the possible right to an offer of employment to his employees.

A number of commenters addressed issues relating to the proposed text of the notice to service contract employees contained in proposed Appendix B. The AFL–CIO suggested that changes should be made to the notice in proposed Appendix B to reflect relevant comments they made to the proposed rule. Specifically, the AFL–CIO suggested that the complaints paragraph of the notice in Appendix B should be amended and expanded to permit employees and their collectively bargained representatives to file a complaint against a contracting agency that fails to provide notice to incumbent employees of a right to an offer of employment, as required by proposed § 9.11(b), or fails to provide notice of a decision to exempt a contract from the nondisplacement requirements, as required by proposed § 9.4(d)(2). This commenter also asked that the final rule remove the words ''if the complainant has not been able to timely file the complaint with the Contracting Officer'' to clarify that a complainant may chose to file a complaint with the WHD rather than with the Contracting Officer especially in instances where the complaint names the contracting agency. The AFL–CIO added that the notice should more clearly state that incumbent as well as former employees may file complaints. A Navy Labor Advisor suggested changes to the format of the notice to service contract employees and also suggested omitting any reference to the Contracting Officer as the principal point of contact for filing complaints.

After consideration, the Department has amended the notice in Appendix B to allow any employee(s) or authorized representative(s) of the predecessor contractor to file a complaint directly with the Department. The Department declines to amend the notice to state that incumbent and former employees of the predecessor contract may file complaints because the final rule has adequately addressed the matter through the use of the term ''employee''. The Department also removed the words ''if the complainant has not been able to timely file the complaint with the Contracting Officer'' and any reference to the Contracting Officer as the principal point of contact for filing complaints. The final rule adopts proposed Appendix B with changes that allow an employee to file a complaint directly with the WHD and to improve the clarity of the notice.

III. Paperwork Reduction Act

General: In accordance with requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, the Department seeks to minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the agency. 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. *See* 5 CFR 1320.6. As required by the PRA, the Department has submitted the information collections contained in this rule to the OMB for approval and will publish a notice in the **Federal Register** upon its approval. Specifically, information collections for employment offers appear in §§ 9.12(a), (b), (e) and (f); the information collections related to the filing of complaints appear in § 9.21.

The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8. The NPRM published in the **Federal Register** on March 19, 2010, invited comments on the information collection burdens imposed by these regulations, and also provided that comments regarding the information collections within the NPRM could be sent directly to OMB. *See* 75 FR 13394. As required by 5 CFR 1320.11, the Department also submitted the information collections to the OMB for approval at the same time as the NPRM appeared in the **Federal Register.** In response, the OMB filed a comment on April 9, 2010, asking the Department to resubmit the approval request after considering any public comments received on the information collections. The Department received no comments regarding ways to reduce the information collection burden; in fact, in order to facilitate the successor contractor's evaluation of the work force, several comments urged the Department to require predecessor contractors to submit the list of employees earlier than the 10 days before contract expiration proposed in the NPRM. (*See e.g.,* Chamber of Commerce and SBA). In response to these comments, the Department has revised the final rule to require a predecessor contractor to provide the list 30 days before contract expiration. The Chamber commented that, in its view, the Department's cost calculations omitted or underestimated several relevant costs of the rule, however; the Chamber did not provide any estimates

or alternative data sources for the Department's consideration. The Department consequently resubmitted the request, after considering the public comments, for OMB approval, and will publish a notice in the **Federal Register** upon its approval.

It should be noted that OMB cleared the employee list mentioned in § 9.12(e)(1) under Control Number 1235–0007, as this list also provides seniority information for vacation benefit purposes. The Department has submitted a change request for this Control Number to incorporate the additional regulatory citations and revise the timing of the list, and will publish a notice in the **Federal Register** upon its approval.

A copy of the information collection requests can be obtained at *http://www.reginfo.gov/public/do/PRAMain* or by contacting the Wage and Hour Division as shown in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Purpose and Use: As previously explained, Executive Order 13495 applies to contracts or subcontracts at or above the simplified acquisition threshold of $150,000 and requires service contracts and their solicitations to include an additional labor standards clause that requires the successor contractor, and its subcontractors, under a contract for performance of the same or similar services at the same location, to provide a right of first refusal of employment to those employees (other than managerial and supervisory employees) employed under the predecessor contract during the final month of contract performance whose employment will be terminated as a result of the award of the successor contract. The Order also requires the successor contractor and subcontractor to make a bona fide, express offer of employment to each predecessor employee, with some exceptions, stating the timeframe within which each employee must accept such offer. For purposes of the remaining PRA discussion, the term contractor covers both contractors and subcontractors, except as noted. The Department has strived to make the information disclosures intuitive.

Section 9.12 of the final rule describes the contractor's requirements and prerogatives. The section includes third party disclosures and recordkeeping requirements that are subject to the PRA. Sections 9.12(a) and (b) require the contractor to make a bona fide express offer of employment to each employee individually, either in writing or orally. Section 9.12(f) also requires the successor service contractor to maintain for specific periods of time copies of records (regardless of format, *e.g.,* paper or electronic) of its compliance, including: (1) Any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any employee meeting(s) at which the offers were extended; a summary of each meeting; a copy of any written notice that may have been distributed; and the names of the employees from the predecessor contract to whom an offer was made; (2) any record that forms the basis for any exclusion or exemption claimed under this part; and (3) the employee list provided to or received from the contracting agency that meets contractor obligations near the end of a contract. Section 9.12(f) also requires every contractor who makes retroactive payment of wages or compensation after an investigation pursuant to § 9.24(b) of this part, to record and preserve the amount of such payment to each employee on a receipt form provided by or authorized by the Wage and Hour Division, deliver a copy to the employee, and file the original with the Administrator or an authorized representative within 10 days after payment is made.

The Department notes that the final rule does not require contractors to create any record regarding any basis for claiming an exclusion or exemption from the nondisplacement provisions of Federal service contracts; however, the contractor would need to retain any such record if created.

The final rule, in § 9.12(e)(1), requires a predecessor contractor near the end of a contract to provide a certified list of the names of all service employees working under that contract (and its subcontracts) during the last month of contract performance to the contracting agency no later than 30 days before completion of the contractor's performance of services on a contract. That requirement may be met by using the seniority list submitted to satisfy the requirements of the contract clause specified in the current SCA regulations at 29 CFR 4.6(l)(2). Therefore, this requirement imposes no additional burden for PRA purposes. The final rule, in § 9.12(e)(2), requires a predecessor contractor to also provide a certified list of the names of all service employees working under that contract (and its subcontracts) during the last month of contract performance to the contracting agency no later than 10 days before completion of the contractor's performance of services on a contract where changes to the workforce have been made after the submission of the certified list described in § 9.12(e)(1). This requirement imposes a minimal additional burden for PRA purposes. The Department anticipates that a large portion of contractors will not make changes to their workforce in the final month of contract performance and will therefore not be required to submit a second certified list; in those cases where the submission of a second list is necessary, the Department anticipates that differences between the two certified lists will usually be minimal.

Section 9.21 of the final rule outlines the procedures for filing complaints under this part. The Department has imposed no specific reporting burden on what information complainants must provide; however, prudent persons asserting certain employment rights normally would provide their own contact information, contact information for their employer, and a basis for why they are filing the complaint.

Information Technology: There is no particular order or form of records prescribed by the final rule. A contractor may meet the requirements of this final rule using paper or electronic means.

Public Burden Estimates: The final rule contains information collection requirements for contractors and complainants. As in the NPRM, the Department bases the following burden estimates for this information collection on agency experience in administering the SCA, the prior version of part 9, and consultations with contracting agencies, except as otherwise noted.

According to the Federal Procurement Data System's (FPDS) 2006 Federal Procurement Report, slightly less than 75,000 (74,611) Federal government contract actions were subject to the SCA during that reporting period. A contract action is any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value. Many contract actions are modifications to or extensions of existing Federal contracts or otherwise relate to actions where there is no successor contractor. The Department, therefore, assumes that about 15,000 per year (slightly more than 20 percent of all SCA covered contract actions in 2006) would be successor contracts subject to the nondisplacement provisions that carry a burden under the PRA. Subcontracts are not reported in the FPDS, and the Department has not found a reliable source on which to estimate the number of subcontracts per SCA prime contract. Based on consultations with Federal procurement

officials, the Department assumes that for PRA purposes a typical SCA contract has one prime contractor and three subcontractors; no comments were received from procurement officials or the public suggesting the Department use alternative data or providing an alternative estimate of the number of subcontractors per prime contractor. Therefore, the Department estimates the information collection requirements of part 9 would apply to approximately 60,000 contracts (15,000 covered contract actions × 4 contractors). A review of FPDS data suggests that, while about 110,000 contractors performed work on Federal service contracts in FY 2006, only 44,039 contractors performed work on service contracts in excess of $25,000. *See* David Berteau, *et al., Structure and Dynamics of the U.S. Federal Professional Services Industrial Base 1995–2007,* Center for Strategic and International Studies, February 2009, at 26, *http://www.csis.org/media/csis/pubs/090212_fps_report_2009.pdf* (*CSIS Report*). Because of the $150,000 threshold, some lesser number of contractors would perform work on contracts subject to the nondisplacement requirements; the Department estimates each year about 40,000 contractors and subcontractors will be subject to this information collection.

Based on the Wage and Hour Division's enforcement experience under the SCA, the Department estimates that each service contract covered by this information collection would involve an average of approximately 15 employees. Moreover, the Department expects successor contractors typically would make oral offers of employment at all-employee meetings where the successor contractor need only make notations on a copy of the employee roster of the offer of employment. Otherwise, the successor contractor would likely make offers of employment individually by mail or electronic means. Beyond making the offer of employment, the successor contractor would also be responsible for maintaining copies of any written offers of employment, or contemporaneous written records of any oral offers of employment, and copies of any records that formed the basis for any exclusion or exemption claimed under the proposed rule. As job offers will typically be made in a bulk fashion, the Department estimates it would take a successor contractor an average of approximately one and one-half minutes per employee to make an offer, whether oral, written, or electronic, and another half minute to file the associated paperwork for each employee, including any paperwork forming the basis for any exclusion or exemption from the obligation to offer employment to a particular employee. Therefore, the Department estimates an annual disclosure and recordkeeping burden of 30 minutes per contract for a total annual burden of 30,000 hours (60,000 contracts × 15 third-party disclosures × 2 minutes).

The information collection requirement for contractors specified in proposed § 9.12(e)(1)—the certified list of employees provided 30 days before contract completion—is cleared under the SCA regulations, 29 CFR 4.6(l)(2), OMB control number 1235–0007, which requires a certified list be provided no later than 10 days before contract completion, and that burden is not duplicated in these estimates. However, contractors experiencing a change in their workforce between the 30 and 10 day periods will have to submit an additional list. Since a certified list would have already been compiled 30 days before completion of the contract, the list produced 10 days before contract completion would only require updating the initial list, if necessary. Therefore, the Department estimates the additional burden to be minimal. For the purpose of estimating burden associated with this requirement, the Department estimates that approximately 50% of contracts will experience a change in workforce between 30 and 10 days of completion of the contract, requiring an updated list. The Department recognizes that the actual number of contractors having to produce two lists is likely to be less, but uses 50% as an upper bound estimate. The Department estimates it would take a predecessor contractor an average of approximately one minute to update the employment status of each employee on a certified list. Therefore, the Department estimates the total burden for creating an updated certified list to be 7,500 hours (60,000 contracts × .5 percent of contracts × 15 employees × 1 minute).

Estimates prepared for the nondisplacement rules promulgated pursuant to Executive Order 12933 suggested the rules applied to only 88 contract actions per year; however, the burdens calculated at that time did not include subcontracts. Using the same criteria as used to calculate burdens under this proposal, the Department estimates the total number of covered contracts and subcontracts for the earlier rule to be approximately 350; suggesting the current rule would apply to about 170 times more successor contracts. As previously noted the Wage and Hour Division received approximately one complaint per year under the old rule. Extrapolating to the current estimate of contracts subject to the current rule, the Department estimates it will receive 170 nondisplacement complaints per year. The Department estimates that each complaint filing will take about 20 minutes; therefore, the Department estimates the total burden for filing complaints to be about 56.6 hours (170 responses × 20 minutes).

The Department acknowledges that for each investigation resulting in violations remedied through the payment of back wages or compensation under the supervision of the Administrator of the Wage and Hour Division, § 9.12(f)(2)(iv) imposes a recordkeeping requirement for the contractor to preserve a report of such payment to each employee on a receipt form provided by the Wage and Hour Division, deliver a copy to the employee, and file the original with the Administrator or an authorized representative within 10 days after payment is made. The Department estimates that approximately 20 percent of all complaints will result in investigations in which violations are found and the appropriate remedy is the payment of back wages and/or restitution, and it will take approximately one minute to record. The Department therefore estimates the total burden to contractors for keeping a record of retroactive payments to be about 34 minutes. (170 complaints × .20 × 1 minute).

The total burden estimates under the PRA (including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information) are as follows: 40,170 respondents; 1,350,170 responses; and 37,556.6 burden hours.

Public Comments: The Nondisplacement NPRM published on March 19, 2010, included a discussion of the information collections that are part of this regulation. The NPRM also invited public comments on the information collections during a 60-day period and provided that comments on the information collection aspects of the NPRM could be submitted directly to the OMB. The Department specifically sought public comments regarding the burdens imposed by information collections contained in this proposed rule. In particular, the Department sought comments that would: evaluate whether the proposed collection of information was necessary for the proper performance of the functions of

the agency, including whether the information would 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. Other portions of this preamble discuss the substance of those comments and the Department's response.

The information collection burdens are summarized as follows:

Type of Review: New collection request. [Request for a new OMB control number for §§ 9.12(a), (b), (f), and 9.21)]; 1235–0007, nonmaterial change to an information collection for § 9.12(e).

Agency: Wage and Hour Division, Department of Labor.

Title: Nondisplacement of Qualified Workers Under Service Contracts, Executive Order 13495.

OMB Control Numbers: 1235–XXXX for §§ 9.12(a), (b), (f), and 9.21; 1235–0007 for § 9.12(e).

Affected Public: Businesses or other for-profit institutions for paragraphs 9.12(a), (b), (e), and (f); individuals for § 9.21.

Total Estimated Number of Respondents: 40,170 for 1235–XXXX; 50,812 for 1235–0007.

Total Estimated Number of Responses: 1,350,170 for 1235–XXXX; 50,812 for 1235–0007.

Response Frequency: On occasion for both.

Estimated Annual Burden Hours: 37,556.6 for 1235–XXXX; 49,220 for 1235–0007.

Estimated Annual Burden Cost (Capitol and Start-up Costs): $0.

Estimated Annual Burden Cost (Maintenance and Operation): $0.

IV. Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

On January 30, 2009, President Barack Obama signed Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts. 74 FR 6103 (Feb. 4, 2009). This Order establishes that when a service contract expires and a follow-on contract is awarded for the same or similar services at the same location, the Federal Government's procurement interests in economy and efficiency are better served when a successor contractor hires the predecessor's employees. A carryover workforce reduces disruption to the delivery of services during the period of transition between contractors and provides the Federal Government the benefits of an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements. As explained in the Order, the successor contractor or its subcontractors often hires the majority of the predecessor's employees when a service contract ends and the work is taken over from one contractor to another. Occasionally, however, a successor contractor or its subcontractors hires a new workforce, thus displacing the predecessor's employees. This final rule implements the Executive Order.

The first sentence of Executive Order 13495 recognizes that successor contractors often hire most of the employees who worked on the predecessor contract, if the contract work will continue at the same location. As further discussed below, the Department believes the rule will not have a significant economic impact, because the proposal would simply require contractors to follow a practice currently used in many cases as a good business practice. The Department expects that, as further explained in this section, there will be few changes in the way most contractors currently conduct business, with the exception that they will need to ensure the appropriate contract language appears in subcontracts. The Department also expects that a majority of remaining contractors will comply with the new requirements by simply replacing aspects of their existing staffing practices with similar practices that do not entail substantial additional burden but do assure compliance with the rule. In addition, the Department expects that in certain instances a contracting agency will exercise its exemption authority to exclude contracts from these requirements if it is clear that application of the nondisplacement requirements would not serve the purposes of the Executive Order or would impair the ability of the agency to procure services on an economical and efficient basis.

In estimating the costs on contractors, the Department has also considered how current practices compare with expected actions contractors typically will take under the nondisplacement provisions. For example, those successor contractors that currently hire new employees for a contract must recruit workers and evaluate their qualifications for positions on the contract. In order to match employees with suitable jobs under this rule, successor contractors will evaluate the predecessor contract employees and available positions; thus, successor contractors are likely to spend an equal amount of time determining job suitability under the rule as under current practices. The costs for documenting these employment decisions will also be similar under both the rule and status quo.

For purposes of this analysis, the Department also believes the time contractors will save by not recruiting an entirely new workforce from the outset will be offset by the additional time a successor contractor will spend in recruiting a new employee when there is a vacant position because the contractor cannot find suitable work for an employee who worked on the predecessor contract or in considering how to minimize displacement when the successor contractor reconfigures how it will deploy employees performing on the successor contract. *See* § 9.12(d)(3). This rule will also not affect wages contractors will pay workers, because of the existing SCA requirement for the wage determination that establishes the minimum rate for each occupation to be incorporated into the contract; thus, existing regulatory requirements already set wage rates, including when the predecessor's collectively bargained rate is incorporated into the contract, that successors must pay. *See* 41 U.S.C. 6707(c); 29 CFR 4.6(b)(1). This rule does not require successor contractors to pay wages higher than the rate required by the SCA. The successor contractor also may offer employment under different terms and conditions, if the reasons for doing so are not related to a desire that the employee refuse the offer or that other employees be hired for the offer. *See* § 9.12(b)(5).

The proposal includes a contract clause provision requiring contractors to incorporate the nondisplacement contract clause into each covered subcontract. This provision comes directly from Executive Order 13495, and the Department estimates that it will take a combined total of 30 minutes for contractors to incorporate the contract clause into each covered subcontract and the subcontractor to review it. Thus, assuming covered contractors spend an additional two hours (accounting for any additional time spent in making job offers, inserting and reviewing the contract clause in subcontracts, and maintaining records) per contract to comply with this proposed rule and increasing the October 2009 average hourly earnings for professional and business workers by 40 percent to account for fringe benefits (a total of $31.32 per hour), this rule is estimated to impose annual costs of $3,758,400 on contractors (60,000 contracts × 2 hours × $31.32). *See The Employment Situation—December 2009,* at 28, Table B–3, Bureau of Labor Statistics, (*http://www.bls.gov/news.release/archives/empsit_01082010.pdf*).

As explained in the PRA section of this preamble, the final rule requires a predecessor contractor to provide a certified list of the names of all service employees working under that contract (and its subcontracts) to the contracting agency no later than 30 days before completion of the contractor's performance of services on the contract. Where changes to the workforce have been made after the submission of the certified list described in § 9.12(e)(1), a predecessor contractor must submit an updated certified list no later than 10 days before completion of the contractor's performance of services on a contract. The clause makes clear that this is the same list as the seniority list provided under the SCA clauses. Since the list already exists and is used by contractors in making hiring decisions under the status quo, additional costs would only be incurred in the instance that there is a change in the workforce necessitating submission of an updated list. The Department does not anticipate that a large portion of contractors will experience a change in workforce between 30 and 10 days of completion of the contract period. However, for the purpose of estimating the cost and burden of this requirement, the Department assumes an upper bound estimate of approximately 50 percent of contracts will experience a change in workforce between 30 and 10 days of completion of the contract, requiring an updated list. The Department estimates that it will take a predecessor contractor an average of approximately one minute to update the employment status of each employee on a certified list, and that each service contract covered by this rule would involve an average of approximately 15 employees (30,000 contracts × 15 minutes = 450,000 minutes, or 7,500 hours). Thus, this requirement is estimated to impose annual costs of $234,900 on contractors (7500 hours × $31.32 = $234,900).

Most contractors will obtain their information primarily from the contract clause, and Wage and Hour Division offices throughout the country are available to provide compliance assistance at no charge to employers; however, in the course of researching compliance options within the context of specific business needs, some contractors will incur additional legal, accounting, and/or other costs associated with complying with the nondisplacement requirements. For purposes of this analysis, the Department estimates 15 percent of covered contractors each will incur additional costs averaging $5,000 because of the regulatory requirements, for a total of $30,000,000 (40,000 contractors × 15% × $5000). The Department believes 10 percent of these 6,000 contractors will face complex issues that will require each spending an average of $10,000 additional dollars, totaling $6,000,000 (6000 contractors × 10% × $10,000). The Department estimates total costs contractors will incur to comply with this rule to be $39,758,400. The Department expects some of these costs will be transferred to the Federal Government in the form of higher bids; however, the Department is not aware of a reasonable way to allocate those costs.

Executive Order 13495 and this final rule would improve Government efficiency and economy in those cases where the practice of offering a right of first refusal of employment would not otherwise have been followed because the requirements decrease or eliminate the loss of productivity that may occur when experienced employees are terminated. As previously indicated, the Department estimates 20 percent of all SCA covered contract actions in 2006 would be subject to this rule. Applying this same percentage to the total FPDS reported value of SCA contract actions during 2006, just under $115,000,000,000 ($114,935,252,182), the Department estimates the total value of contracts subject to the nondisplacement provisions to be $23,000,000,000 ($115,000,000,000 × 0.2).

Some of the potential savings from any increase in economy and efficiency will be absorbed by the expenses contracting agencies will incur to administer the requirements. The Department has used the 2010 Rest of United States salary table to estimate salary expenses. *See http://www.opm.gov/oca/10tables/html/RUS_h.asp.* The Department believes contracting agencies will spend 30 minutes on each insertion of the applicable contract clauses in a successor prime contract, for a total of 7500 hours (15,000 × 0.5 hours). The Department assumes this work will be performed by a GS–11, step 4 Federal employee, earning $30.26 per hour, for a cost of $226,950 (7500 hours × $30.26). While it will be clear that in most cases there is no reason for a contracting agency to exempt a contract from the nondisplacement requirements, the Department estimates contracting agencies will spend an average of two hours on each covered contract and subcontract to make the determination and that a GS–13, step 4 Federal employee earning $43.13 per hour will perform the work, for a cost of $5,175,600 (60,000 contracts and subcontracts × 2 hours × $43.13). Once this analysis is done, the contracting agency must inform the contract employees of the decision to exempt the contract. The Department believes this notification will take about 30 minutes per contract and that the work will be performed by a GS–9, Step 4 Federal employee earning $25.01, for a cost of $750,300 (60,000 contracts and subcontracts × 0.5 hours × $25.01). This includes the time needed to prepare the notice and post it at the worksite or prepare a written notice that is provided in a bulk manner to the employees. The estimated general administrative costs equal $6,152,850.

The rule also requires Contracting Officers to provide documentation to the Wage and Hour Division within 14 days of the original filing. § 9.11(d). The Federal costs associated with this requirement include the time it takes to gather the documents related to the complaint and the reproduction and mailing cost to forward the copies to the Wage and Hour Division. Federal costs will also include the cost for the Wage and Hour Division to review the complaint to determine what further action might be appropriate. The Department estimates the Wage and Hour Division will receive 170 nondisplacement complaints per year.

GS–13, step 4 to review complaint at the Wage and Hour Division and determine whether to schedule compliance action:

170 complaints × 10 minutes review time = 28 hours (rounded)
28 hours × $43.13 = $1,208 (rounded)

GS–11, step 4 to compile and review the complaint and supplemental documents for forwarding:

170 complaints × 20 minutes = 57 hours (rounded)
57 hours × $30.26 = $1,725 (rounded)

GS–3, step 4 to photocopy & assemble complaint documents:

170 complaints × 10 minutes = 28 hours (rounded)
28 hours × $13.14 = $368 (rounded)

Printing costs:

170 complaints × 4 pages × 3 copies × $0.05 per page = $102

Postage:

170 complaints × 3 mailings (DOL, contractor, and complainant) × $0.47 ($0.44 each + $0.03 per envelope) = $240 (rounded)

GS 12, step 4 to investigate complaints

170 complaints × 20 hours = 3,400 hours
3400 hours × $36.27 = $123,318
Printing 60,000 notices × $0.05 per notice = $3,000
Enforcement Subtotal $129,961
Total Gross Annual Federal Cost estimate = $6,282,811

The Department estimates that some cost savings will result from this final rule. Some of these savings, however, may actually transfer to contractors who are bidding on the contract, especially in light of the additional costs they are likely to incur. After offsetting the potential savings attributed to the Federal government from the overall additional costs attributed to contractors, the Department estimates the nondisplacement provisions covered by this rule could result in a net cost savings, but is unable to estimate. The Department wishes to emphasize that while this analysis is presented in terms of contractor and Federal Government costs and savings, because costs and savings will factor into final bid proposals, some of the potential savings to the federal government are likely to transfer to contractors in the form of higher bids. In any event, this rule is expected to have an effect on the economy that is less than the $100,000,000 threshold for a rule to be considered economically significant.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) as amended, requires agencies to prepare regulatory flexibility analyses and make them available for public comment, when proposing regulations that will have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the rule is not expected to have a significant economic impact on a substantial number of small entities, the RFA allows an agency to certify such, in lieu of preparing an analysis. *See* 5 U.S.C. 605. As explained in the Initial Regulatory Flexibility Analysis section of the proposed rule, the Department did not expect the proposed rule to have a significant economic impact on a substantial number of small entities. 75 FR 13396 (Mar. 19, 2010). However, in the interest of transparency and to provide an opportunity for public comment, the Department prepared an initial regulatory flexibility analysis rather than certifying that the proposed rule was not expected to have a significant economic impact on a substantial number of small entities. The Department specifically requested comments on the initial regulatory flexibility analysis, including the number of small entities affected by the nondisplacement requirements, and the existence of alternatives that would reduce burden on small entities while still meeting the requirements of Executive Order 13495. *See* 75 FR 13396–13399 (Mar. 19, 2010). The Department received five comments on the initial regulatory flexibility analysis.

TechAmerica commented that the proposed rule should be revised to address the negative impact on small businesses, particularly the requirement to make an offer of employment to the predecessor contractor's employees. This commenter stated that small businesses often do not possess sufficient resources to both retain their current employees and hire incumbent personnel, and it therefore recommended that the Department exempt small business prime contractors from the nondisplacement requirements in order to avoid displacement of incumbent small business employees. The Department notes that the potential for a contractor's current personnel to be displaced due to the requirement to offer employment to a predecessor's employees is alleviated by Section 5(b) of the Executive Order and Section 9.12(c)(2) of this final rule, which provide that a successor contractor may employ under the contract any employee who has worked for the contractor for at least 3 months immediately preceding the commencement of the contract and who would otherwise face lay-off or discharge. Therefore, the Department does not believe that revising the rule as suggested by this commenter is necessary or appropriate.

The Chamber stated that many of the Department's assumptions in the initial regulatory flexibility analysis and the Executive Order 12866 analysis were not appropriately explained, making the Department's calculations difficult to fully replicate. The Chamber specifically commented that there is no mention of the burden on small businesses created by the record keeping requirements of this rule. Similarly, TechAmerica commented that it believes that the Department's initial regulatory flexibility analysis underestimates the impact of the rule on small businesses and that the Department's estimates were unrealistic. TechAmerica asked the Department to conduct a more thorough analysis based on a realistic estimate of the burdens and costs that the requirements would impose on small businesses. The Department used the best data available for conducting its review of the rule under the PRA, Executive Order 12866, and the RFA. As discussed in the preamble of the proposed rule, where the Department was unable to find reliable data sources, the Department made reasonable assumptions and characterized the assumptions as such. 75 FR 13393–13399 (Mar. 19, 2010). Neither the Chamber nor TechAmerica offered any data sources or alternative assumptions for the Department to use in determining the impact of the rule. The Department does not believe that additional analysis of the impacts of the rule are warranted as the analyses included in the proposed rule were based on the best available data, the Department identified where it made assumptions, and the commenters did not provide any alternative data or data sources for the Department's consideration. However, in reviewing the analyses in light of these comments, the Department determined that it inadvertently omitted reference to the particular chart used to determine the number of contract actions subject to the SCA in FY 2006. The chart, *Subject to Labor Statute,* appears in the Federal Procurement Report FY 2006, Section III Agency Views, available at: *https://www.fpds.gov/fpdsng_cms/index.php/reports.*

Several commenters, including SBA Office of Advocacy, the PSC, and TechAmerica, suggested that the Department consider alternatives that provide flexibilities for small businesses. However, only two commenters offered alternatives for consideration. TechAmerica recommended that the Department revise the proposed rule to include an exception for small business prime

contractors, while the PSC recommended that the Department consider exempting contracts where ten or fewer employees are employed by the predecessor contractor. The Department appreciates these suggestions, but believes the suggested alternatives are beyond the scope of the Department's authority in implementing the Executive Order. The Executive Order excludes contracts or subcontracts below the simplified acquisition threshold, effectively excluding many small contractors from compliance with its provisions and provides no specific authority to the Department for creating other exemptions or exceptions from compliance with the provisions of the Executive Order.

The SBA Office of Advocacy questioned how this rule will work with other requirements applicable to Federal Government contractors, such as use of the Department of Homeland Security's e-Verify system. The Department does not believe that application of this final rule interferes with or impacts an employer's compliance with other applicable Federal laws. Pursuant to Executive Order 13465, which amended Executive Order 12989, contractors to all executive departments and agencies are required to electronically verify employment authorization of employees performing work under qualifying Federal contracts. *See* 73 FR 33285 (Jun. 11, 2008). Nothing in this final rule interferes with or impedes a contractor's compliance with Executive Order 12989 as amended. Additionally, based on Sections 1 and 9(b) of Executive Order 13495, and as discussed in connection with Section 9.1 of this final rule, the Department does not believe that application of this final rule will interfere with or a contracting agency's or contractor's compliance with other applicable Federal laws, such as Executive Order 11246 (Equal Employment Opportunity), the Vietnam Era Veterans' Readjustment Assistance Act of 1974, or the requirements of the HUBZone program established by title VI of the Small Business Reauthorization Act of 1997.

This commenter also stated that the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires that the Department prepare a Small Business Compliance Guide to assist small entities in complying with this rule and to set up a response system to answer inquiries from small entities about the rule. The Department is committed to providing employers subject to this rule, regardless of whether or not the employer is a small business, with information and assistance on compliance with the provisions of this final rule. However, because the Department is able to certify that this rule will not have a significant economic impact on a substantial number of small entities (as further discussed below), the Department is not required by SBREFA to develop a Small Business Compliance Guide with respect to this rule. The Department will provide compliance assistance to contracting agencies, contractors and employees through the publication of materials on the agency's Web site, outreach and education seminars, and through Wage and Hour Division offices throughout the country, which provide compliance assistance at no charge to employers.

Based on the analysis below, the Department has estimated the number of covered small contractors and subcontractors subject to the rule and the financial burdens to these small contractors and subcontractors associated with complying with the requirements of this final rule. The Department estimates that 28,800 small contractors will be subject to this rule, the majority of which will incur compliance costs of less than $100. Therefore, the Department has certified to the Chief Counsel for the Office of Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13495 establishes that, when a service contract expires and a follow-on contract is awarded for the same or similar services at the same location, the Federal Government's procurement interests in economy and efficiency are better served when a successor contractor hires the predecessor's employees. A carryover workforce reduces disruption to the delivery of services during the period of transition between contractors and provides the Federal Government the benefits of an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements. This final rule implements the Executive Order.

This final rule applies to entities that perform work for the Federal Government on contracts or subcontracts subject to the SCA of $150,000 or more. The Department has found no precise data with which to measure the precise number of small entities that would be covered by this final rule; however, certain available data allow for estimates. As discussed more fully in the Paperwork Reduction Act portion of this preamble, according to the Federal Procurement Data System's (FPDS) 2006 Federal Procurement Report [1], slightly less than 75,000 (74,611) Federal government contract actions were subject to the SCA during that reporting period. A contract action is any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value. Many contract actions are modifications to or extensions of existing Federal contracts or otherwise relate to actions where there is no successor contractor. The Department, therefore, assumes that about 15,000 per year (slightly more than 20 percent of all SCA covered contract actions in 2006) would be successor contracts subject to the nondisplacement provisions. The Department also assumes, based on consultations with Federal procurement officials, that for PRA purposes a typical SCA contract has one prime contractor and three subcontractors; therefore, the Department estimates the requirements of part 9 would apply to approximately 60,000 contracts (15,000 covered contract actions × 4 contractors). A review of FPDS data suggests that only 44,039 contractors performed work on service contracts in excess of $25,000 in FY 2006. *See* David Berteau, *et al., Structure and Dynamics of the U.S. Federal Professional Services Industrial Base 1995–2007,* Center for Strategic and International Studies, February 2009, at 26, *http://www.csis.org/media/csis/pubs/090212_fps_report_2009.pdf* (*CSIS Report*). Because of the $150,000 threshold, some lesser number of contractors would perform work on contracts subject to the nondisplacement requirements; the Department estimates each year about 40,000 contractors and subcontractors will be subject to this information collection. FPDS data also suggest that slightly less than 55 percent of all contract actions relate to small entities. Applying this percentage to the 40,000 estimated covered contractors and subcontractors (generically referred to as contractors in this analysis, unless otherwise noted), suggests this rule will apply to 22,000 small entities. The Chamber contends that multiplying a percentage of contract actions by the estimated number of covered contractors and subcontractors erroneously compares apples with oranges, given that small and large entities may not work on SCA contracts in equal proportions, particularly given

[1] *See* chart entitled *Subject to Labor Statute,* Federal Procurement Report FY 2006, Section III Agency Views, available at: *https://www.fpds.gov/fpdsng_cms/index.php/reports.*

the indication that there may be approximately three subcontractors for every prime contractor. However, the Chamber points to no specific data to substantiate its stated concern, nor does it provide any concrete basis for its own assumption that subcontractors are disproportionately likely to be small businesses. The Department remains persuaded that its calculation is valid based on the available data, as supplemented by reasonable assumptions.

The CSIS Report found that 31,700 small businesses in FY 2006 undertook contracts worth at least $25,000 (72 percent of all contractors undertaking Federal professional service contracts of at least $25,000). CSIS Report at 26. Again, this rule would apply only to a portion of these contractors; however, using this latter percentage suggests the rule might apply to 28,800 small businesses. This is an upper bound estimate, because (in addition to not applying to contracts or subcontracts of less than $150,000) the final rule would not apply to small entities with certain contracts or subcontracts awarded for services produced or provided by persons who are blind or have severe disabilities or contracts exempted by the contracting agency. The earlier analysis showing 40,000 contractors will work on 60,000 successor contracts and subcontracts (generically referred to as contracts in this analysis, unless otherwise noted) subject to this rule suggests a typical contractor will work on 1.5 successor contracts subject to the nondisplacement provisions. For purposes of this analysis, the Department assumes each covered small contractor will also work on an average of 1.5 covered successor contracts each year, the same ratio as all contractors; thus, this final rule is expected to apply to no more than 43,200 successor contracts awarded to small contractors.

In estimating the costs on small contractors, the Department has considered how current practices compare with expected actions contractors typically will take under the nondisplacement provisions. For example, those successor contractors that currently hire new employees for a contract must recruit workers and evaluate their qualifications for positions on the contract. In order to match employees with suitable jobs under this final rule, successor contractors will evaluate the predecessor contract employees and available positions; thus, successor contractors are likely to spend an equal amount of time determining job suitability under the final rule as under current practices. The costs for documenting these employment decisions will also be similar under both the final rule and status quo.

For purposes of this analysis, the Department also believes the time small contactors will save by not recruiting an entirely new workforce from the outset will be offset by the additional time a successor contractor will spend in recruiting a new employee when there is a vacant position because the contractor cannot find suitable work for an employee who worked on the predecessor contract or in considering how to minimize displacement when the successor contractor reconfigures how it will deploy employees performing on the successor contract. *See* § 9.12(d)(3). As previously mentioned, this final rule will also not affect wages that contractors will pay workers because of the existing SCA requirement for the wage determination that establishes the minimum rate for each occupation to be incorporated into the contract; thus, existing regulatory requirements already set wage rates, including when the predecessor's collectively bargained rate is incorporated into the contract, successors must pay. *See* 41 U.S.C. 353(c); 29 CFR 4.6(b)(1). This final rule does not require successor contractors to pay wages higher than the rate required by the SCA. The successor contractor also may offer employment under different terms and conditions, if the reasons for doing so are not related to a desire that the employee refuse the offer or that other employees be hired for the offer. *See* § 9.12(b)(5).

The final rule includes a contract clause provision requiring contractors to incorporate the nondisplacement contract clause into each covered subcontract. This provision comes directly from Executive Order 13495, and the Department estimates that it will take a combined total of 30 minutes for contractors to incorporate the contract clause into each covered subcontract and the subcontractor to review it. As will be further explained later in this analysis, 85 percent of all small contractors are expected to incur no additional costs under this final rule. Assuming covered contractors spend an additional two hours (accounting for any additional time spent in making job offers, inserting and reviewing the contract clause in subcontracts, and maintaining records) per contract to comply with this final rule and increasing the October 2009 average hourly earnings for professional and business workers by 40 percent to account for fringe benefits (a total of $31.32 per hour), this rule is estimated to impose annual costs of less than $100 on most small contractors (1.5 contracts per contractor × 2 hours × $31.32). *See The Employment Situation—December 2009,* at 28, Table B–3, Bureau of Labor Statistics, (*http://www.bls.gov/news.release/archives/empsit_01082010.pdf*). Aggregate compliance costs for these general requirements are expected to be $2,706,048 (28,800 contractors × 1.5 contracts × 2 hours × $31.32).

As explained in the PRA section of this preamble, the final rule requires a predecessor contractor to provide a certified list of the names of all service employees working under that contract (and its subcontracts) to the contracting agency no later than 30 days before completion of the contractor's performance of services on a contract. Where changes to the workforce have been made after the submission of the certified list described in § 9.12(e)(1), a predecessor contractor must submit an updated certified list no later than 10 days before completion of the contractor's performance of services on a contract. The clause makes clear that this is the same list as the seniority list provided under the Service Contract Act clauses. This list already exists and is used by contractors in making hiring decisions under the status quo. Additional costs would only be incurred when there is a change in the workforce necessitating submission of an updated certified list. The department anticipates that a large portion of contractors will not make changes to their workforce in the final month of contract performance and will therefore not be required to submit a second certified list. However, to assure the most inclusive approximation the Department estimates that 50 percent of small contractors' contracts will experience a change in workforce between 30 and 10 days of completion of the contract, requiring an updated list. The Department recognizes that the actual number of contractors having to produce two lists is likely to be less, but uses 50 percent as an upper bound estimate (28,800 contractors × 1.5 contracts × .5 = 21,600 contracts). The Department estimates that it will take a predecessor contractor an average of approximately one minute to update the employment status of each employee on a certified list, and that each service contract covered by this rule would involve an average of approximately 15 employees. The Department has found no precise data with which to measure the precise number of employees on contracts awarded to small contractors, but applies the estimate used for the class of all contracts subject to the

nondisplacement provisions. The Department recognizes that this will be an upper bound estimate, since the number of employees employed on contracts awarded to small contractors is likely to be less than those in the class of all contracts subject to the nondisplacement provisions. Thus, this requirement is estimated to impose annual costs of $169,128 on small contractors (21,600 contracts × 15 employees × 1 minute = 5,400 hours. 5,400 hours × $31.32 = $169,128).

As with other contractors, most small contractors will obtain information about the nondisplacement requirements primarily from the contract clause, and Wage and Hour Division offices throughout the country are available to provide compliance assistance at no charge to employers. While the Department believes this rule has been drafted in a way that should enable the vast majority of contractors to comply with the nondisplacement requirements without the need of professional assistance from an attorney or accountant, the Department recognizes some contractors will seek such assistance in the course of researching compliance options within the context of specific business needs. As a result, for purposes of this analysis, the Department estimates 15 percent of covered contractors each will incur additional costs averaging $5000 because of the final rule requirements, for a total of $21,600,000 spent by 4320 small contractors (28,800 contractors × 15% × $5000). The Department estimates that ten percent of these 4320 contractors will face complex issues for which each will spend an average of $10,000 additional dollars to address, totaling $4,320,000 spent by 432 small contractors (4320 contractors × 10% × $10,000). The Department estimates total compliance costs that the 28,800 small contractors subject to this final rule will incur will be $28,626,048, with more than 90 percent of costs being borne by 4320 of these contractors ($26,325,907/$28,626,048). As with other contractors, the Department expects some compliance costs will be transferred to the Federal Government in the form of higher bids; however, the agency is not aware of a reasonable way to allocate those costs.

VI. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this final rule does not include any Federal mandate that may result in excess of $100 million in expenditures by state, local, and tribal governments in the aggregate or by the private sector.

VII. Executive Order 13132 (Federalism)

The Department has (1) Reviewed this rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The final rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

VIII. Executive Order 13175, Indian Tribal Governments

This final rule would not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The final rule would not have substantial direct effects 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.

IX. Effects on Families

The undersigned hereby certifies that the final rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

X. Executive Order 13045, Protection of Children

This final rule would have no environmental health risk or safety risk that may disproportionately affect children.

XI. Environmental Impact Assessment

A review of this final rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR part 1500 *et seq.;* and the Departmental NEPA procedures, 29 CFR part 11, indicates that the rule would not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

XII. Executive Order 13211, Energy Supply

This final rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

XIII. Executive Order 12630, Constitutionally Protected Property Rights

This final rule is not subject to Executive Order 12630, because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

XIV. Executive Order 12988, Civil Justice Reform Analysis

This final rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The final rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects in 29 CFR Part 9

Employment, Federal buildings and facilities, Government contracts, Law enforcement, Labor.

Nancy J. Leppink,

Deputy Administrator, Wage and Hour Division.

For the reasons set out in the preamble, the Department amends Title 29 of the Code of Federal Regulations by adding part 9 as set forth below:

PART 9—NONDISPLACEMENT OF QUALIFIED WORKERS UNDER SERVICE CONTRACTS

Subpart A—General

Sec.
9.1 Purpose and scope.
9.2 Definitions.
9.3 Coverage.
9.4 Exclusions.

Subpart B—Requirements

9.11 Contracting agency requirements.
9.12 Contractor requirements and prerogatives.

Subpart C—Enforcement

9.21 Complaints.
9.22 Wage and Hour Division conciliation.
9.23 Wage and Hour Division investigation.
9.24 Remedies and sanctions for violations of this part.

Subpart D—Administrator's Determination, Mediation, and Administrative Proceedings

9.31 Administrator's determination.
9.32 Requesting appeals.
9.33 Mediation.
9.34 Administrative Law Judge hearings.
9.35 Administrative Review Board proceedings.
Appendix A to Part 9—Contract Clause
Appendix B to Part 9—Notice to Service Contract Employees.

Authority: 5 U.S.C. 301; section 6, E.O. 13495, 74 FR 6103; Secretary's Order 9–2009, 74 FR 58836.

Subpart A—General

§ 9.1 Purpose and scope.

(a) *Purpose.* This part contains the Department of Labor's rules relating to the administration of Executive Order 13495, ''Nondisplacement of Qualified Workers Under Service Contracts,'' and implements the enforcement provisions of the Executive Order. The Executive Order assigns enforcement responsibility for the nondisplacement requirements to the Department. The Executive Order states that the Federal Government's procurement interests in economy and efficiency are served when the successor contractor hires the predecessor's employees. A carryover workforce minimizes disruption in the delivery of services during a period of transition between contractors and provides the Federal Government the benefit of an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements. Executive Order 13495, therefore, generally requires that successor service contractors performing on Federal contracts offer a right of first refusal to suitable employment (*i.e.,* a job for which the employee is qualified) under the contract to those employees under the predecessor contract whose employment will be terminated as a result of the award of the successor contract.

(b) *Policy.* Executive Order 13495 establishes a Federal Government policy for service contracts and their solicitations to include a clause that requires the contractor and its subcontractors under a contract that succeeds a contract for performance of the same or similar services at the same location to offer a right of first refusal of employment to those employees (other than managerial and supervisory employees) employed under the predecessor contract whose employment will be terminated as a result of the award of the successor contract in positions for which the employees are qualified. Nothing in Executive Order 13495 or this part shall be construed to permit a contractor or subcontractor to fail to comply with any provision of any other Executive Order, regulation, or law of the United States.

(c) *Scope.* Neither Executive Order 13495 nor this part creates any rights under the Contract Disputes Act or any private right of action. The Executive Order provides that disputes regarding the requirement of the contract clause prescribed by section 5 of the Order, to the extent permitted by law, shall be disposed of only as provided by the Secretary of Labor in regulations issued under the Order. It also provides for this part to favor the resolution of disputes by efficient and informal alternative dispute resolution methods to the extent practicable. The Order does not preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act. Additionally, the Order also provides that it is to be implemented consistent with applicable law and subject to the availability of appropriations.

§ 9.2 Definitions.

For purposes of this part:

Administrator means the Administrator of the Wage and Hour Division and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

Administrative Review Board means the Administrative Review Board, U.S. Department of Labor.

Contractor means a prime contractor and all of its first or lower tier subcontractors on a Federal service contract.

Contracting Officer means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into procurement contracts on behalf of the Federal contracting agency.

Day means, unless otherwise specified, a calendar day.

Employee or *service employee* means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term *employee* or *service employee* includes all such persons, as defined in the McNamara-O'Hara Service Contract Act of 1965, as amended, regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

Employment opening means any vacancy in a position on the contract, including any vacancy caused by replacing an employee from the predecessor contract with a different employee.

Federal Government means an agency or instrumentality of the United States that enters into a procurement contract pursuant to authority derived from the Constitution and the laws of the United States.

Managerial employee and *supervisory employee* mean a person engaged in the performance of services under the contract who is employed in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in 29 CFR part 541.

Month means a period of 30 consecutive days, regardless of the day of the calendar month on which it begins.

Office of Administrative Law Judges means the Office of Administrative Law Judges, U.S. Department of Labor.

Secretary means the U.S. Secretary of Labor or an authorized representative of the Secretary.

Same or similar service means a service that is either identical to or has one or more characteristics that are alike in substance to a service performed at the same location on a contract that is being replaced by the Federal Government or a contractor on a Federal service contract.

Service contract or *contract* means any contract or subcontract for services entered into by the Federal Government or its contractors that is covered by the McNamara-O'Hara Service Contract Act of 1965, as amended, and its implementing regulations.

Solicitation means any request to submit offers or quotations to the Government.

United States means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including non-appropriated fund instrumentalities.

Wage and Hour Division means the Wage and Hour Division, U.S. Department of Labor.

§ 9.3 Coverage.

This part applies to all service contracts and their solicitations, except those excluded by § 9.4 of this part, that succeed contracts for the same or similar service at the same location.

§ 9.4 Exclusions.

(a) *Small contracts.* (1) *General.* The requirements of this part do not apply to contracts or subcontracts under the simplified acquisition threshold set by the Office of Federal Procurement Policy Act, as amended.

(2) *Application to subcontracts.* While the § 9.4(a)(1) exclusion applies to subcontracts that are less than the simplified acquisition threshold, the prime contractor must comply with the requirements of this part, if the prime contract is at least the threshold

amount. When a contractor that is subject to the nondisplacement requirements of this part discontinues the services of a subcontractor at any time during the contract and performs those services itself at the same location, the contractor shall offer employment on the contract to the subcontractor's employees who would otherwise be displaced and would otherwise be qualified in accordance with this part but for the size of the subcontract.

(b) *Certain contracts or subcontracts awarded for services produced or provided by persons who are blind or have severe disabilities.* (1) The requirements of this part do not apply to contracts or subcontracts pursuant to the Javits-Wagner-O'Day Act.

(2) The requirements of this part do not apply to contracts or subcontracts for guard, elevator operator, messenger, or custodial services provided to the Federal Government under contracts or subcontracts with sheltered workshops employing the *severely handicapped* as described in sec. 505 of the Treasury, Postal Services and General Government Appropriations Act, 1995.

(3) The requirements of this part do not apply to agreements for vending facilities entered into pursuant to the preference regulations issued under the Randolph-Sheppard Act.

(4) The exclusions provided by paragraphs (b)(1) through (3) of this section apply when either the predecessor or successor contract has been awarded for services produced or provided by the severely disabled, as described in paragraphs (b)(1)–(3) of this section.

(c) *Federal service work constituting only part of employee's job.* This part does not apply to employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employees were not deployed in a manner that was designed to avoid the purposes of Executive Order 13495.

(d) *Contracts exempted by Federal agency.* This part does not apply to any contract, subcontract, or purchase order or any class of contracts, subcontracts, or purchase orders as to which the head of a contracting department or agency finds that the application of any of the requirements of this part would not serve the purposes of Executive Order 13495 or would impair the ability of the Federal Government to procure services on an economical and efficient basis.

(1) Any agency determination to exercise its exemption authority under Section 4 of the Executive Order shall be made no later than the solicitation date. As an alternative to exempting the agency from all provisions of this part, the head of a contracting department or agency may exempt the agency from one or more individual provisions no later than the contract solicitation date. Any agency determination to exercise its exemption authority under Section 4 of the Executive Order made after the solicitation date shall be inoperative and in such a circumstance the contract clause set forth in Appendix A of this part shall be included in, or added to, the covered service contracts and their solicitations.

(2) When an agency exercises its exemption authority with respect to any contract, subcontract, or purchase order, the contracting agency shall ensure that the contractor notifies affected workers and their collective bargaining representatives in writing of the agency's determination no later than five business days after the solicitation date. The notification shall include facts supporting the determination that the application of one or more requirements of this part would not serve the purposes of Executive Order 13495 or would impair the ability of the Federal Government to procure services on an economical and efficient basis. Where a contracting agency exempts a class of contracts, subcontracts, or purchase orders, the contractor shall provide the notice to incumbent workers and their collective bargaining representatives for each individual solicitation. A contracting agency's failure to ensure that the contractor notifies incumbent workers and their collective bargaining representatives in writing of the agency's determination to exercise its exemption authority under Section 4 of the Executive Order no later than five business days after the solicitation date shall render the exemption decision inoperative and in such a circumstance the contract clause set forth in Appendix A of this part shall be included in, or added to, the covered service contracts and their solicitations. The contracting agency also shall notify the Department of its exemption decision and provide the Department with a copy of its written analysis no later than five business days after the solicitation date, which the Department will post on its Web site at *http://www.dol.gov.* The contracting agency's failure to follow this requirement shall render any agency exemption decision inoperative and in such a circumstance the clause in Appendix A of this part shall be included in, or added to, the covered service contracts and their solicitations.

(3) The agency shall ensure that the predecessor contractor uses the notification method specified in § 9.11(b) of this part to inform workers and their collective bargaining representatives of the exemption determination. The failure by a contracting agency to ensure that the contractor uses the notification method specified in § 9.11(b) of this part shall render the exemption decision inoperative and in such a circumstance the contract clause set forth in Appendix A of this part shall be included in, or added to, the covered service contracts and their solicitations.

(4)(i) In exercising the authority to exempt contracts under this section based on a finding that any of the requirements of Executive Order 13495 would not serve the purposes of the Order, or would impair the ability of the Federal Government to procure services on an economical and efficient basis, the agency shall prepare a written analysis by the solicitation date supporting such determination. The written analysis shall be retained in accordance with FAR 4.805. 48 CFR 4.805. Such a written analysis shall, among other things, compare the anticipated outcomes of hiring predecessor contract employees with those of hiring a new workforce. The consideration of cost and other factors in exercising the agency's exemption authority shall reflect the general finding made by the Executive Order that the government's procurement interests in economy and efficiency are normally served when the successor contractor hires the predecessor's employees, and shall specify how the particular circumstances support a contrary conclusion. Any agency determination to exercise its exemption authority under Section 4 of the Executive Order without a written analysis as required by this part shall be inoperative and in such a circumstance the contract clause set forth in Appendix A of this part shall be included in, or added to, the covered service contracts and their solicitations.

(ii) When analyzing whether the application of the Executive Order's requirements would not serve the purposes of the Order and impair the ability of the Federal Government to procure services on an economical and efficient basis, the head of a contracting department or agency shall consider the specific circumstances associated with the services to be acquired. General assertions or presumptions of an inability to procure services on an economical and efficient basis using a carryover workforce shall be deemed insufficient. Factors that may be considered include, but are not limited to the following:

(A) Whether the use of a carryover workforce would greatly increase disruption to the delivery of services during the period of transition between contracts (*e.g.,* the carryover workforce in its entirety would not be an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements as pertinent to the contract, subcontract, purchase order, class of contracts, subcontracts, or purchase orders at issue and would require extensive training to learn new technology or processes that would not be required of a new workforce).

(B) Emergency situations, such as a natural disaster or an act of war, that physically displace incumbent employees from the location of the service contract work and make it impossible or impracticable to extend offers to hire as required by the Order.

(C) Situations where the head of the contracting department or agency reasonably believes, based on the predecessor employees' past performance, that the entire predecessor workforce failed, individually as well as collectively, to perform suitably on the job and that it is not in the interest of economy and efficiency to provide supplemental training to the predecessor's workers.

(iii) Factors the head of a contracting department or agency shall not consider in making an exemption determination (because consideration of such factors would contravene the Executive Order's purposes and findings) include whether the use of a carryover workforce, in general, would greatly increase disruption to the delivery of services during the period of transition between contracts; whether, in general, a carryover workforce would not be an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements; the job performance of the predecessor contractor; the seniority of the workforce; and the reconfiguration of the contract work by a successor contractor. The head of a contracting department or agency also shall not consider wage rates and fringe benefits of service employees in making an exemption determination except in the following exceptional circumstances:

(A) In emergency situations, such as a natural disaster or an act of war, that physically displace incumbent employees from the locations of the service contract work and make it impossible or impracticable to extend offers to hire as required by the Order;

(B) When a carryover workforce in its entirety would not constitute an experienced and trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements but rather would require extensive training to learn new technology or processes that would not be required of a new workforce; or

(C) Other, similar circumstances in which the cost of employing a carryover workforce on the successor contract would be prohibitive.

(5) Any request by interested parties for reconsideration of a contracting department or agency head's determination to exercise its exemption authority under Section 4 of the Executive Order shall be directed to the head of the contracting department or agency.

(e) *Managerial and supervisory employees.* This part does not apply to employees who are managerial or supervisory employees of Federal service contractors or subcontractors. *See* § 9.2(9) of this part, definition of *managerial employee* and *supervisory employee.*

Subpart B—Requirements

§ 9.11 Contracting agency requirements.

(a) Contract Clause. The contract clause set forth in Appendix A of this part shall be included in covered service contracts, and solicitations for such contracts, that succeed contracts for performance of the same or similar services at the same location.

(b) *Notice.* Where a contract will be awarded to a successor for the same or similar services to be performed at the same location, the Contracting Officer will ensure that the predecessor contractor provide written notice to service employees of the predecessor contractor of their possible right to an offer of employment. Such notice shall be either posted in a conspicuous place at the worksite or delivered to the employees individually. Where the predecessor contractor's workforce is comprised of a significant portion of workers who are not fluent in English, the notice shall be provided in both English and a language with which the employees are more familiar. Multiple foreign language notices are required where significant portions of the workforce speak different foreign languages and there is no common language. Contracting Officers may advise contractors to provide the notice set forth in Appendix B to this part in either a physical posting at the job site, or another format that effectively provides individual notice such as individual paper notices or effective email notification to the affected employees. To be effective, email notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice. Any particular determination of the adequacy of a notification, regardless of the method used, must be fact-dependent and made on a case-by-case basis.

(c) *Disclosures.* The Contracting Officer shall provide the incumbent contractor's list of employees referenced in § 9.12(e) of this part to the successor contractor and, on request, to employees or their representatives.

(d) *Actions on complaints.* (1) *Reporting.* (i) *Reporting time frame.* Within 14 days of being contacted by the Wage and Hour Division, the Contracting Officer shall forward all information listed in paragraph (d)(1)(ii) of this section to the Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(ii) *Report contents:* Except as provided by paragraph (d)(3) of this section, the Contracting Officer shall forward to the Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 any:

(A) Complaint of contractor noncompliance with this part;

(B) Available statements by the employee or the contractor regarding the alleged violation;

(C) Evidence that a seniority list was issued by the predecessor and provided to the successor;

(D) A copy of the seniority list;

(E) Evidence that the nondisplacement contract clause was included in the contract or that the contract was exempted by the contracting agency;

(F) Information concerning known settlement negotiations between the parties, if applicable;

(G) Any other relevant facts known to the Contracting Officer or other information requested by the Wage and Hour Division.

(2) [Reserved]

§ 9.12 Contractor requirements and prerogatives.

(a) *General.* (1) *No employment openings prior to right of first refusal.* Except as provided under the exclusions listed in § 9.4 of this part or paragraphs (c) and (d) of this section, a successor contractor or subcontractor shall fill no employment openings under the contract prior to making good faith offers of employment (*i.e.,* a right of first refusal to employment on the contract), in positions for which the employees are qualified, to those employees employed under the predecessor

contract whose employment will be terminated as a result of award of the contract or the expiration of the contract under which the employees were hired. The contractor and its subcontractors shall make a bona fide, express offer of employment to a position for which the employee is qualified to each employee and shall state the time within which the employee must accept such offer, but in no case shall the period within which the employee must accept the offer of employment be less than 10 days.

(2) *No seniority list available.* The successor contractor's obligation to offer a right of first refusal exists even if the successor contractor has not been provided a list of the predecessor contractor's employees or the list does not contain the names of all persons employed during the final month of contract performance.

(3) *Determining eligibility.* While a person's entitlement to a job offer under this part usually will be based on whether he or she is named on the certified list of all service employees working under the predecessor's contract or subcontracts during the last month of contract performance, a contractor must also accept other credible evidence of an employee's entitlement to a job offer under this part. For example, even if a person's name does not appear on the list of employees on the predecessor contract, an employee's assertion of an assignment to work on a contract during the predecessor's last month of performance coupled with contracting agency staff verification could constitute credible evidence of an employee's entitlement to a job offer, as otherwise provided for in this part. Similarly, an employee could demonstrate eligibility by producing a paycheck stub identifying the work location and dates worked.

(b) *Method of job offer.* (1) *Bona-fide offer.* Except as otherwise provided in this part, a contractor must make a bona fide express offer of employment to each qualified employee on the predecessor contract before offering employment on the contract to any other person. In determining whether an employee is entitled to a bona fide, express offer of employment, a contractor may consider the exceptions set forth in paragraph (c) of this section and may utilize employment screening processes (*i.e.,* drug tests, background checks, security clearance checks, and similar pre-employment screening mechanisms) only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with the Executive Order. The obligation to offer employment under this part shall cease upon the employee's first refusal of a bona fide offer to employment on the contract.

(2) *Establishing time limit for employee response.* The contractor shall state the time within which an employee must accept an employment offer, but in no case may the period in which the employee has to accept the offer be less than 10 days.

(3) *Process.* The successor contractor must, in writing or orally, offer employment to each employee. *See also* paragraph (f) of this section, Recordkeeping. In order to ensure that the offer is effectively communicated, the successor contractor should take reasonable efforts to make the offer in a language that each worker understands. For example, if the contractor holds a meeting for a group of employees on the predecessor contract in order to extend the employment offers, having a co-worker or other person who fluently translates for employees who are not fluent in English would satisfy this provision.

(4) *Different job position.* As a general matter, an offer of employment on the successor's contract will be presumed to be a bona fide offer of employment, even if it is not for a position similar to the one the employee previously held but one for which the employee is qualified. If a question arises concerning an employee's qualifications, that question shall be decided based upon the employee's education and employment history, with particular emphasis on the employee's experience on the predecessor contract. A contractor must base its decision regarding an employee's qualifications on credible information provided by a knowledgeable source such as the predecessor contractor, the local supervisor, the employee, or the contracting agency.

(5) *Different employment terms and conditions.* An offer of employment to a position on the contract under different employment terms and conditions, including changes to pay or benefits, than the employee held with the predecessor contractor will be considered bona fide, if the reasons are not related to a desire that the employee refuse the offer or that other employees be hired for the offer.

(6) *Termination after contract commencement.* Where an employee is terminated under circumstances suggesting the offer of employment may not have been bona fide, the facts and circumstances of the offer and the termination will be closely examined during any compliance action to ensure the offer was bona fide.

(c) *Exceptions.* The successor contractor will bear the responsibility of demonstrating the appropriateness of claiming any of the following exceptions to the nondisplacement provisions subject to this part.

(1) *Nondisplaced employees.* (i) A contractor or subcontractor is not required to offer employment to any employee of the predecessor contractor who will be retained by the predecessor contractor.

(ii) The contractor must presume that all employees hired to work under a predecessor's Federal service contract will be terminated as a result of the award of the successor contract, absent an ability to demonstrate a reasonable belief to the contrary that is based upon credible information provided by a knowledgeable source such as the predecessor contractor or the employee.

(2) *Successor's current employees.* A contractor or subcontractor may employ under the contract any employee who has worked for the contractor or subcontractor for at least 3 months immediately preceding the commencement of the contract and who would otherwise face lay-off or discharge.

(3) *Predecessor contractor's non-service employees.* (i) A contractor or subcontractor is not required to offer employment to any employee of the predecessor who is not a service employee. *See* § 9.2 of this part for definitions of *employee, managerial employee* and *supervisory employee.*

(ii) The contractor must presume that all employees hired to work under a predecessor's Federal service contract are service employees, absent an ability to demonstrate a reasonable belief to the contrary that is based upon credible information provided by a knowledgeable source such as the predecessor contractor, the employee, or the contracting agency. Information regarding the general business practices of the predecessor contractor or the industry is not sufficient to claim this exemption.

(4) *Employee's past unsuitable performance.* (i) A contractor or subcontractor is not required to offer employment to any employee of the predecessor contractor for whom the contractor or any of its subcontractors reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job.

(ii)(A) The contractor must presume that all employees working under the predecessor contract in the last month of performance performed suitable work on the contract, absent an ability to demonstrate a reasonable belief to the contrary that is based upon written

credible information provided by a knowledgeable source such as the predecessor contractor and its subcontractors, the local supervisor, the employee, or the contracting agency.

(B) For example, a contractor may demonstrate its reasonable belief that the employee, in fact, failed to perform suitably on the predecessor contract through written evidence of disciplinary action taken for poor performance or evidence directly from the contracting agency that the particular employee did not perform suitably. The performance determination must be made on an individual basis for each employee. Information regarding the general performance of the predecessor contractor is not sufficient to claim this exception.

(5) *Non-Federal work.* (i) A contractor or subcontractor is not required to offer employment to any employee hired to work under a predecessor's Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employee was not deployed in a manner that was designed to avoid the purposes of this part.

(ii) The successor contractor must presume that no employees hired to work under a predecessor's Federal service contract worked on one or more nonfederal service contracts as part of a single job, unless the successor can demonstrate a reasonable belief to the contrary. The successor contractor must demonstrate that its belief is reasonable and is based upon credible information provided by a knowledgeable source such as the predecessor contractor, the local supervisor, the employee, or the contracting agency. Information regarding the general business practices of the predecessor contractor or the industry is not sufficient.

(iii) A contractor that makes a reasonable determination that a predecessor contractor's employee also performed work on one or more nonfederal service contracts as part of a single job must also make a reasonable determination that the employee was not deployed in such a way that was designed to avoid the purposes of this part. The successor contractor must demonstrate that its belief is reasonable and is based upon credible information that has been provided by a knowledgeable source such as the employee or the contracting agency. For example, evidence from a contracting agency that an employee worked only occasionally on a Federal service contract combined with a statement from the employee indicating fulltime employment with the predecessor would, absent other facts, constitute the basis for a reasonable belief that there is no obligation to offer employment to the employee. On the other hand, information suggesting a change in how a predecessor contractor deployed employees near the end of the contract period could suggest an effort to evade the purposes of this part.

(d) *Reduced staffing.* (1) *Contractor determines how many employees.* (i) A contractor or subcontractor shall determine the number of employees necessary for efficient performance of the contract or subcontract and, for bona fide staffing or work assignment reasons, may elect to employ fewer employees than the predecessor contractor employed in connection with performance of the work. Thus, the successor contractor need not offer employment on the contract to all employees on the predecessor contract, but must offer employment only to the number of eligible employees the successor contractor believes necessary to meet its anticipated staffing pattern, except that:

(ii) Where, in accordance with this authority to employ fewer employees, a successor contractor does not offer employment to all the predecessor contract employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract. The contractor's obligation under this part will end when all of the predecessor contract employees have received a bona fide job offer, including stating the time within which the employee must accept such offer, which must be no less than 10 days, or the 90-day window of obligation has expired. The following three examples demonstrate the principle.

(A) A contractor with 18 employment openings and a list of 20 employees from the predecessor contract must continue to offer employment to individuals on the list until 18 of the employees accept the contractor's employment offer or until the remaining employees have rejected the offer. If an employee quits or is terminated from the successor contract within 90 days of the first date of contract performance, the contractor must first offer employment to any remaining eligible employees of the predecessor contract.

(B) A successor contractor originally offers 20 jobs to predecessor contract employees on a contract that had 30 positions under the predecessor contractor. The first 20 predecessor contract employees the successor contractor approaches accept the employment offer. Within a month of commencing work on the contract, the successor determines that it must hire seven additional employees to perform the contract requirements. The first three predecessor contract employees to whom the successor offers employment decline the offer; however, the next four predecessor contract employees accept the offers. In accordance with the provisions of this section, the successor contractor offers employment on the contract to the three remaining predecessor contract employees who all accept; however, two employees on the contract quit five weeks later. The successor contractor has no further obligation under this part to make a second employment offer to the persons who previously declined an offer of employment on the contract.

(C) A successor contractor reduces staff on a successor contract by two positions from the predecessor contract's staffing pattern. Each predecessor contract employee the successor approaches accepts the employment offer; therefore, employment offers are not made to two predecessor contract employees. The successor contractor terminates an employee five months later. The successor contractor has no obligation to offer employment to the two remaining employees from the predecessor contract, because more than 90 days have passed since the successor contractor's first date of performance on the contract.

(2) *Contractor determines which employees.* The contractor, subject to provisions of this part and other applicable restrictions (including non-discrimination laws and regulations), will determine to which employees it will offer employment. *See* § 9.1(b) regarding compliance with other requirements.

(3) *Changes to staffing pattern.* Where a contractor reduces the number of employees in any occupation on a contract with multiple occupations, resulting in some displacement, the contractor shall scrutinize each employee's qualifications in order to offer positions to the greatest number of predecessor contract employees possible. Example: A successor contract is awarded for a food preparation and services contract with Cook II, Cook I and dishwasher positions. The Cook II position requires a higher level of skill than the Cook I position. The successor contractor reconfigures the staffing pattern on the contract by increasing the number persons employed as a Cook II and Dishwashers but reducing the number of Cook I employees. The successor contractor must examine the qualifications of each Cook I to see if a position as either a Cook II or Dishwasher is possible. Conversely,

were the contractor to increase the number of Cook I employees, decrease the number of Cook II employees, and keep the same number of Dishwashers the contractor would generally be able offer Cook I positions to some Cook II employees, because the Cook II performs a higher level occupation. The contractor would also need to consider whether offering Dishwasher positions to Cook I employees would result in less overall displacement. Finally, should some Dishwashers decline the employment offer, the Contractor would need to consider the qualifications of the Cooks at both levels and offer positions on the contract in a way that results in the least displacement.

(e) *Contractor obligations near end of contract performance.* (1) Certified list of employees provided 30 days before contract completion. The contractor shall, not less than 30 days before completion of the contractor's performance of services on a contract, furnish the Contracting Officer with a list of the names of all service employees working under the contract and its subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Assuming there are no changes to the workforce before the contract is completed, the contractor may use the list submitted, or to be submitted, to satisfy the requirements of the contract clause specified at 29 CFR 4.6(l)(2) to meet this provision.

(2) Certified list of employees provided 10 days before contract completion. Where changes to the workforce are made after the submission of the certified list described in paragraph (e)(1) of this section, the contractor shall, not less than 10 days before completion of the contractor's performance of services on a contract, furnish the Contracting Officer with a certified list of the names of all service employees employed within the last month of contract performance. The list shall also contain anniversary dates of employment and, where applicable, dates of separation of each service employee under the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. The contractor may use the list submitted to satisfy the requirements of the contract clause specified at 29 CFR 4.6(l)(2) to meet this provision.

(f) *Recordkeeping.* (1) *Form of records.* This part prescribes no particular order or form of records for contractors. A contractor may use records developed for any purpose to satisfy the requirements of this part, provided the records otherwise meet the requirements and purposes of this part and are fully accessible. The requirements of this part shall apply to all records regardless of their format (*e.g.,* paper or electronic).

(2) *Records to be retained.* (i) The contractor shall maintain copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the employees from the predecessor contract to whom an offer was made.

(ii) The contractor shall maintain a copy of any record that forms the basis for any exclusion or exemption claimed under this part.

(iii) The contractor shall maintain a copy of the employee list received from the contracting agency. *See* paragraph (e) of this section, contractor obligations near end of contract.

(iv) Every contractor who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to § 9.24(b) of this part, shall:

(A) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(B) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and

(*1*) Preserve a copy as part of the records,

(*2*) Deliver a copy to the employee, and

(*3*) File the original, as evidence of payment by the contractor and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(3) *Records retention period.* The contractor shall retain records prescribed by section § 9.12(f)(2) of this part for not less than a period of three years from the date the records were created.

(4) *Disclosure.* The contractor must provide copies of such documentation upon request of any authorized representative of the contracting agency or Department of Labor.

(g) *Investigations.* The contractor shall cooperate in any review or investigation conducted pursuant to this part and shall not interfere with the investigation or intimidate, blacklist, discharge, or in any other manner discriminate against any person because such person has cooperated in an investigation or proceeding under this part or has attempted to exercise any rights afforded under this part. This obligation to cooperate with investigations is not limited to investigations of the contractor's own actions, but also includes investigations related to other contractors (*e.g.,* predecessor and subsequent contractors) and subcontractors.

Subpart C—Enforcement

§ 9.21 Complaints.

With Wage and Hour Division. Any employee(s) or authorized employee representative(s) of the predecessor contractor who believes the successor contractor has violated this part may file a complaint with the Wage and Hour Division within 120 days from the first date of contract performance. The employee may file a complaint directly with the Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

§ 9.22 Wage and Hour Division conciliation.

After obtaining information regarding alleged violations, the Wage and Hour Division may contact the successor contractor about the complaint and attempt to conciliate and reach a resolution that is consistent with the requirements of this part and is acceptable to both the complainant(s) and the successor contractor.

§ 9.23 Wage and Hour Division investigation.

(a) *Initial investigation.* The Administrator may initiate an investigation under this part either as the result of the unsuccessful conciliation of a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator may inspect the records of the predecessor and successor contractors (and make copies or transcriptions thereof), question the predecessor and successor contractors and any employees of these contractors, and require the production of any documentary or other evidence deemed necessary to determine whether a violation of this part (including conduct warranting imposition of ineligibility sanctions pursuant to § 9.24(d) of this part) has occurred.

(b) *Subsequent investigations.* The Administrator may conduct a new

investigation or issue a new determination if the Administrator concludes circumstances warrant, such as where the proceedings before an Administrative Law Judge reveal that there may have been violations with respect to other employees of the contractor, where imposition of ineligibility sanctions is appropriate, or where the contractor has failed to comply with an order of the Secretary.

§ 9.24 Remedies and sanctions for violations of this part.

(a) *Authority.* Executive Order 13495 provides that the Secretary shall have the authority to issue orders prescribing appropriate remedies, including, but not limited to, requiring the contractor to offer employment, in positions for which the employees are qualified, to employees from the predecessor contract and the payment of wages lost.

(b) *Unpaid wages or other relief due.* In addition to satisfying any costs imposed under §§ 9.34(j) or 9.35(d) of this part, a contractor who violates any provision of this part shall take appropriate action to abate the violation, which may include hiring each affected employee in a position on the contract for which the employee is qualified, together with compensation (including lost wages), terms, conditions, and privileges of that employment.

(c) *Withholding of funds.* (1) *Unpaid wages or other relief.* After an investigation and a determination by the Administrator that lost wages or other monetary relief is due, the Administrator may direct that so much of the accrued payments due on either the contract or any other contract between the contractor and the Government shall be withheld as are necessary to pay the moneys due. Upon the final order of the Secretary that such moneys are due, the Administrator may direct that such withheld funds be transferred to the Department of Labor for disbursement.

(2) *List of employees.* If the Contracting Officer or the Administrator, upon final order of the Secretary, finds that the predecessor contractor has failed to provide a list of the names of employees working under the contract in accordance with § 9.12(e) of this part, the Contracting Officer may in his or her discretion, or upon request by the Administrator, take such action as may be necessary to cause the suspension of the payment of contract funds until such time as the list is provided to the Contracting Officer.

(d) *Ineligibility listing.* Where the Secretary finds that a contractor has failed to comply with any order of the Secretary, or has committed willful or aggravated violations of this part, the Secretary may order that the contractor and its responsible officers, and any firm in which the contractor has a substantial interest, shall be ineligible to be awarded any contract or subcontract of the United States for a period of up to three years. Neither an order for debarment of any contractor or subcontractor from further Government contracts under this section nor the inclusion of a contractor or subcontractor on a published list of noncomplying contractors shall be carried out without affording the contractor or subcontractor an opportunity for a hearing.

Subpart D—Administrator's Determination, Mediation, and Administrative Proceedings

§ 9.31 Determination of the Administrator.

(a) *Written determination.* Upon completion of an investigation under § 9.23 of this part, and provided that a resolution is not reached that is consistent with the requirements of this part and acceptable to both the complainant(s) and the successor contractor, the Administrator will issue a written determination of whether a violation has occurred. The determination shall contain a statement of the investigation findings and conclusions. A determination that a violation occurred shall address appropriate relief and the issue of ineligibility sanctions where appropriate. The Administrator will notify any complainant(s); employee representative(s); contractor, including the prime contractor if a subcontractor is implicated; and contractor representative(s) by personal service or by registered or certified mail to the last known address, of the investigation findings. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) *Notice to parties and effect.* (1) *Relevant facts in dispute.* Except as provided in paragraph (b)(2) of this section, the determination of the Administrator shall advise the parties (ordinarily any complainant, the successor contractor, and any of their representatives) that the notice of determination shall become the final order of the Secretary and shall not be appealable in any administrative or judicial proceeding unless, postmarked within 20 days of the date of the determination of the Administrator, the Chief Administrative Law Judge receives a request for a hearing pursuant to § 9.32(b)(1) of this part. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing. The Administrator's determination not to seek ineligibility sanctions shall not be appealable.

(2) *Relevant facts not in dispute.* If the Administrator concludes that no relevant facts are in dispute, the parties and their representatives, if any, will be so advised and will be further advised that the determination shall become the final order of the Secretary and shall not be appealable in any administrative or judicial proceeding unless, postmarked within 20 days of the date of the determination of the Administrator, a petition for review is filed with the Administrative Review Board pursuant to § 9.32(b)(2) of this part. The determination will further advise that if an aggrieved party disagrees with the factual findings or believes there are relevant facts in dispute, the aggrieved party may advise the Administrator of the disputed facts and request a hearing by letter, which must be received within 20 days of the date of the determination. The Administrator will either refer the request for a hearing to the Chief Administrative Law Judge, or notify the parties and their representatives, if any, of the determination of the Administrator that there is no relevant issue of fact and that a petition for review may be filed with the Administrative Review Board within 20 days of the date of the notice, in accordance with the procedures at § 9.32(b)(2) of this part.

§ 9.32 Requesting appeals.

(a) *General.* If any party desires review of the determination of the Administrator, including judicial review, a request for an Administrative Law Judge hearing or petition for review by the Administrative Review Board must first be filed in accordance with § 9.31(b) of this part.

(b) *Process.* (1) *For Administrative Law Judge hearing.* (i) *General.* Any aggrieved party may file a request for a hearing by an Administrative Law Judge within 20 days of the determination of the Administrator. The request for a hearing shall be accompanied by a copy of the determination of the Administrator and may be filed by U.S. mail, facsimile (FAX), telegram, hand delivery, next-day delivery, or a similar service. At the same time, a copy of any request for a hearing shall be sent to the complainant(s) or successor contractor, and their representatives, if any, as appropriate; the Administrator of the Wage and Hour Division; and the

Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(ii) *By the complainant.* The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that a contractor has committed violation(s), or where the complainant or other interested party believes that the Administrator has ordered inadequate monetary relief. In such a proceeding, the party requesting the hearing shall be the prosecuting party and the contractor shall be the respondent; the Administrator may intervene as a party or appear as amicus curiae at any time in the proceeding, at the Administrator's discretion.

(iii) *By the contractor.* The contractor or any other interested party may request a hearing where the Administrator determines, after investigation, that the contractor has committed violation(s). In such a proceeding, the Administrator shall be the prosecuting party and the contractor shall be the respondent.

(2) *For Administrative Review Board review.* (i) *General.* Any aggrieved party desiring review of a determination of the Administrator in which there were no relevant facts in dispute, or an Administrative Law Judge's decision, shall file a written petition for review with the Administrative Review Board that must be postmarked within 20 days of the date of the determination or decision and shall be served on all parties and, where the case involves an appeal from an Administrative Law Judge's decision, the Chief Administrative Law Judge. *See also* § 9.32(b)(1) of this part.

(ii) *Contents and service.* (A) A petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

(B) Copies of the petition and all briefs shall be served on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(c) *Effect of filing.* If a timely request for hearing or petition for review is filed, the determination of the Administrator or the decision of the Administrative Law Judge shall be inoperative unless and until the Administrative Review Board issues an order affirming the determination or decision, or the determination or decision otherwise becomes a final order of the Secretary. If a petition for review concerns only the imposition of ineligibility sanctions, however, the remainder of the decision shall be effective immediately. No judicial review shall be available unless a timely petition for review to the Administrative Review Board is first filed.

§ 9.33 Mediation.

(a) *General.* The parties are encouraged to resolve disputes in accordance with the conciliation procedures set forth at § 9.22 of this part, or, where such efforts have failed, to utilize settlement judges to mediate settlement negotiations pursuant to 29 CFR 18.9 when those provisions apply. At any time after commencement of a proceeding, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) *Appointing settlement judge for cases scheduled with the Office of Administrative Law Judges.* Upon a request by a party or the presiding Administrative Law Judge, the Chief Administrative Law Judge may appoint a settlement judge. The Chief Administrative Law Judge has sole discretion to decide whether to appoint a settlement judge, except that a settlement judge shall not be appointed when a party objects to referral of the matter to a settlement judge.

§ 9.34 Administrative Law Judge hearings.

(a) *Authority.* (1) *General.* The Office of Administrative Law Judges has jurisdiction to hear and decide appeals pursuant to § 9.31(b)(1) of this part concerning questions of law and fact from determinations of the Administrator issued under § 9.31 of this part. In considering the matters within the scope of its jurisdiction, the Administrative Law Judge shall act as the authorized representative of the Secretary and shall act fully and, subject to an appeal filed under § 9.32(b)(2) of this part, finally on behalf of the Secretary concerning such matters.

(2) *Limit on scope of review.* (i) The Administrative Law Judge shall not have jurisdiction to pass on the validity of any provision of this part.

(ii) The Equal Access to Justice Act, as amended, does not apply to hearings under this part. Accordingly, an Administrative Law Judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Scheduling.* If the case is not stayed to attempt settlement in accordance with § 9.33(a) of this part, the Administrative Law Judge to whom the case is assigned shall, within 15 calendar days following receipt of the request for hearing, notify the parties and any representatives, of the day, time, and place for hearing. The date of the hearing shall not be more than 60 days from the date of receipt of the request for hearing.

(c) *Dismissing challenges for failure to participate.* The Administrative Law Judge may, at the request of a party or on his/her own motion, dismiss a challenge to a determination of the Administrator upon the failure of the party requesting a hearing or his/her representative to attend a hearing without good cause; or upon the failure of said party to comply with a lawful order of the Administrative Law Judge.

(d) *Administrator's participation.* At the Administrator's discretion, the Administrator has the right to participate as a party or as amicus curiae at any time in the proceedings, including the right to petition for review of a decision of an Administrative Law Judge in a case in which the Administrator has not previously participated. The Administrator shall participate as a party in any proceeding in which the Administrator has found any violation of this part, except where the complainant or other interested party challenges only the amount of monetary relief. *See also* § 9.32(b)(2)(i)(C) of this part.

(e) *Agency participation.* A Federal agency that is interested in a proceeding may participate, at the agency's discretion, as amicus curiae at any time in the proceedings. At the request of such Federal agency, copies of all pleadings in a case shall be served on the Federal agency, whether or not the agency is participating in the proceeding.

(f) *Requesting documents.* Copies of the request for hearing and documents filed in all cases, whether or not the Administrator is participating in the proceeding, shall be sent to the Administrator, Wage and Hour Division, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(g) *Rules of practice.* (1) The rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18, subpart A, shall be applicable to the proceedings provided by this section. This part is controlling to the extent it provides any rules of special application that may be inconsistent with the rules in 29 CFR part 18, subpart A. The Rules of Evidence at 29 CFR 18, subpart B, shall not apply. Rules or principles designed to assure production of the most

probative evidence available shall be applied. The Administrative Law Judge may exclude evidence that is immaterial, irrelevant, or unduly repetitive.

(h) *Decisions.* The Administrative Law Judge shall issue a decision within 60 days after completion of the proceeding at which evidence was submitted. The decision shall contain appropriate findings, conclusions, and an order and be served upon all parties to the proceeding.

(i) *Orders.* Upon the conclusion of the hearing and the issuance of a decision that a violation has occurred, the Administrative Law Judge shall issue an order that the successor contractor take appropriate action to abate the violation, which may include hiring each affected employee in a position on the contract for which the employee is qualified, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where the Administrator has sought ineligibility sanctions, the order shall also address whether such sanctions are appropriate.

(j) *Costs.* If an order finding the successor contractor violated this part is issued, the Administrative Law Judge may assess against the contractor a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the aggrieved employee(s) in the proceeding. This amount shall be awarded in addition to any unpaid wages or other relief due under § 9.24(b) of this part.

(k) *Finality.* The decision of the Administrative Law Judge shall become the final order of the Secretary, unless a petition for review is timely filed with the Administrative Review Board as set forth in § 9.32(b)(2) of this part.

§ 9.35 Administrative Review Board proceedings.

(a) *Authority.* (1) *General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals pursuant to § 9.31(b)(2) concerning questions of law and fact from determinations of the Administrator issued under § 9.31 of this part and from decisions of Administrative Law Judges issued under § 9.34 of this part. In considering the matters within the scope of its jurisdiction, the Board shall act as the authorized representative of the Secretary and shall act fully and finally on behalf of the Secretary concerning such matters.

(2) *Limit on scope of review.* (i) The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, for any proceeding under this part, the Administrative Review Board shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Board's final decision shall be issued within 90 days of the receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Board concludes that the contractor has violated this part, the final order shall order action to abate the violation, which may include hiring each affected employee in a position on the contract for which the employee is qualified, together with compensation (including lost wages), terms, conditions, and privileges of that employment. Where the Administrator has sought imposition of ineligibility sanctions, the Board shall also determine whether an order imposing ineligibility sanctions is appropriate.

(d) *Costs.* If a final order finding the successor contractor violated this part is issued, the Board may assess against the contractor a sum equal to the aggregate amount of all costs (not including attorney fees) and expenses reasonably incurred by the aggrieved employee(s) in the proceeding. This amount shall be awarded in addition to any unpaid wages or other relief due under § 9.24(b) of this part.

(e) *Finality.* The decision of the Administrative Review Board shall become the final order of the Secretary.

Appendix A to Part 9—Contract Clause

Nondisplacement of Qualified Workers

(a) Consistent with the efficient performance of this contract, the contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer those employees (other than managerial and supervisory employees) employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal of employment under this contract in positions for which employees are qualified. The contractor and its subcontractors shall determine the number of employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor contractor employed in connection with performance of the work. Except as provided in paragraph (b) there shall be no employment opening under this contract, and the contractor and any subcontractors shall not offer employment under this contract, to any person prior to having complied fully with this obligation. The contractor and its subcontractors shall make a bona fide, express offer of employment to each employee as provided herein and shall state the time within which the employee must accept such offer, but in no case shall the period within which the employee must accept the offer of employment be less than 10 days.

(b) Notwithstanding the obligation under paragraph (a) above, the contractor and any subcontractors (1) may employ under this contract any employee who has worked for the contractor or subcontractor for at least 3 months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge, (2) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act of 1965, as amended, 41 U.S.C. 6701(3), and (3) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor whom the contractor or any of its subcontractors reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job.

(c) In accordance with Federal Acquisition Regulation 52.222–41(n), the contractor shall, not less than 10 days before completion of this contract, furnish the Contracting Officer a certified list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor contractors or their subcontractors. The Contracting Officer will provide the list to the successor contractor, and the list shall be provided on request, to employees or their representatives.

(d) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the contractor or its subcontractors, as provided in Executive Order 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

(e) In every subcontract entered into in order to perform services under this contract, the contractor will include provisions that ensure that each subcontractor will honor the requirements of paragraphs (a) through (b) with respect to the employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor contractor and its subcontractors. The subcontract shall also include provisions to ensure that the

subcontractor will provide the contractor with the information about the employees of the subcontractor needed by the contractor to comply with paragraph (c), above. The contractor will take such action with respect to any such subcontract as may be directed by the Secretary as a means of enforcing such provisions, including the imposition of sanctions for noncompliance: provided, however, that if the contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the contractor may request that the United States enter into such litigation to protect the interests of the United States.

(f)(1) The contractor shall, not less than 30 days before completion of the contractor's performance of services on a contract, furnish the Contracting Officer with a list of the names of all service employees working under the contract and its subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph (f) (1), the contractor shall, *in accordance with paragraph (c),* not less than 10 days before completion of the contractor's performance of services on a contract, furnish the Contracting Officer with *an updated* certified list of the names of all service employees employed within the last month of contract performance. The *updated* list shall also contain anniversary dates of employment and, where applicable, dates of separation of each service employee under the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. *Only contractors experiencing a change in their workforce between the 30- and 10-day periods will have to submit a list in accordance with paragraph (c).*

(2) The Contracting Officer shall withhold or cause to be withheld from the prime contractor under this or any other Government contract with the same prime contractor such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board that there has been a failure to comply with the terms of this clause and that wages lost as a result of the violations are due to employees or that other monetary relief is appropriate. If the Contracting Officer or the Administrator, upon final order of the Secretary, finds that the contractor has failed to provide a list of the names of employees working under the contract, the Contracting Officer may in his or her discretion, or upon request by the Administrator, take such action as may be necessary to cause the suspension of the payment of contract funds until such time as the list is provided to the Contracting Officer.

(g) The contractor and subcontractor shall maintain the following records (regardless of format, *e.g.,* paper or electronic, provided the records meet the requirements and purposes of this subpart and are fully accessible) of its compliance with this clause for not less than a period of three years from the date the records were created:

(1) Copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the employees from the predecessor contract to whom an offer was made.

(2) A copy of any record that forms the basis for any exclusion or exemption claimed under this part.

(3) A copy of the employee list provided to or received from the contracting agency.

(4) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The contractor shall also deliver a copy of the receipt to the employee and file the original, as evidence of payment by the contractor and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(h) The contractor shall cooperate in any review or investigation by the contracting agency or the Department of Labor into possible violations of the provisions of this clause and shall make records requested by such official(s) available for inspection, copying, or transcription upon request.

(i) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: the contractor, the contracting agency, the U.S. Department of Labor, and the employees under the contract or its predecessor contract.

Appendix B to Part 9—Notice to Service Contract Employees

The contract for (insert type of service) services currently performed by (insert name of predecessor contractor) has been awarded to a new (successor) contractor (insert name of successor contractor). The new contractor's first date of performance on the contract will be (insert first date of successor contractor's performance). If the work is to be performed at the same location, the new contractor is generally required to offer employment to the employees who worked on the contract during the last 30 days of the current contract, except as follows:

Employees who will not be laid off or discharged as a result of the new contract award are not entitled to an offer of employment.

Managerial, supervisory, or non-service employees on the current contract are not entitled to an offer of employment.

The new contractor may reduce the size of the current workforce; therefore, only a portion of the existing workforce may receive employment offers. However, the new contractor must offer employment to the displaced employees for which they are qualified if any openings occur during the first 90 days of performance on the new contract.

The new contractor may employ its current employee on the new contract before offering employment to the existing contractor's employees only if the new contractor's current employee has worked for the new contractor for at least 3 months immediately preceding the first date of performance on the new contract and would otherwise face layoff or discharge if not employed under the new contract.

Where the new contractor has reason to believe, based on written credible information from a knowledgeable source, that an employee's job performance while working on the current contract has been unsuitable, the employee is not entitled to an offer of employment on the new contract.

An employee hired to work under the current Federal service contract and one or more nonfederal service contracts as part of a single job is not entitled to an offer of employment on the new contract, provided that the existing contractor did not deploy the employee in a manner that was designed to avoid the purposes of this part.

Time limit to accept offer: If you are offered employment on the new contract, you will have at least 10 days to accept the offer.

Complaints: Any employee(s) or authorized employee representative(s) of the predecessor contractor who believes that he or she is entitled to an offer of employment with the new contractor and who has not received an offer, may file a complaint, within 120 days from the first date of contract performance, with the Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

For additional information: 1–866–4US–WAGE (1–866–487–9243) TTY: 1–877–889–5627, *http://www.wagehour.dol.gov.*

[FR Doc. 2011–21261 Filed 8–26–11; 8:45 am]

BILLING CODE 4510–27–P

FEDERAL REGISTER

Vol. 76 Monday,

No. 167 August 29, 2011

Part III

Department of Homeland Security

8 CFR Parts 1, 100, et al.

Immigration Benefits Business Transformation, Increment I; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 1, 100, 103, 204, 207, 208, 209, 211, 212, 213a, 214, 223, 235, 236, 238, 240, 241, 244, 245, 245a, 248, 264, 265, 270, 274a, 287, 292, 299, 301, 310, 312, 316, 319, 320, 322, 324, 325, 328, 329, 330, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 343a, 343b, 343c, 392, and 499

[CIS No. 2481–09; DHS Docket No. USCIS–2009–0022]

RIN 1615–AB83

Immigration Benefits Business Transformation, Increment I

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule; request for comments.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations to enable U.S. Citizenship and Immigration Services (USCIS) to migrate from a paper file-based, non-integrated systems environment to an electronic customer-focused, centralized case management environment for benefit processing. This transformation process will allow USCIS to streamline benefit processing, eliminate the capture and processing of redundant data, and reduce the number of and automate its forms. This transformation process will be a phased multi-year initiative to restructure USCIS business processes and related information technology systems. DHS is removing references to form numbers, form titles, expired regulatory provisions, and descriptions of internal procedures, many of which will change during transformation. DHS is also finalizing interim rules that permitted submission of benefit requests with an electronic signature when such requests are submitted in an electronic format rather than on a paper form and that removed references to filing locations for immigration benefits. In addition, in this rule DHS is publishing the final rule for six other interim rules published during the past several years, most of which received no public comments.

DATES: *Effective date:* This rule is effective November 28, 2011.

Comment date: Written comments must be submitted on or before October 28, 2011.

ADDRESSES: You may submit comments, identified by DHS docket number USCIS–2009–0022 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* You may submit comments directly to USCIS by e-mail at *uscisfrcomment@dhs.gov.* Include DHS docket number USCIS–2009–0022 in the subject line of the message.
- *Mail:* Sunday Aigbe, Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529–2020. To ensure proper handling, please reference DHS docket number USCIS–2009–0022 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Sunday Aigbe, Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529–2020. Contact Telephone Number is (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Dan Konnerth, Policy Chief, Office of Transformation Coordination, U.S. Citizenship and Immigration Services, Department of Homeland Security, 633 Third St., NW., Washington, DC 20529–2210. Contact Telephone Number is (202) 233–2381.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation
II. Background
  A. Introduction
  B. Authority
  C. USCIS Transformation Initiative
  D. How Transformation Will Work
  E. Other Regulatory Changes Necessary for the Transformation Initiative
III. The Changes Made by This Rule
  A. Removing References to Form Numbers and Form Titles
  B. Removing References to Position Titles Within USCIS
  C. Replacing ''Service'' With More Specific Component Names and Removing References to Particular USCIS Offices
  D. Removing Information About Procedures for Filing and Internal Processing of Benefit Requests
  E. Removing Obsolete and Expired Regulatory Provisions; Correcting and Updating Provisions Affected by Statutory Changes
  F. Revising or Reorganizing Sections or Paragraphs for Clarity and Consistency and To Remove Duplicative Information
IV. Discussion of Comments Received in Response to the April 29, 2003, Interim Rule
V. Discussion of Other Interim Final Rules Being Finalized
  A. Application for Refugee Status; Acceptable Sponsorship Agreement Guaranty of Transportation, RIN 1615–AA24
  B. Adjustment of Status for Certain Syrian Nationals Granted Asylum in the United States, RIN 1615–AA57
  C. Eliminating the Numerical Cap on Mexican TN Nonimmigrants, RIN 1615–AA96
  D. Allocation of Additional H–1B Visas Created by the H–1B Visa Reform Act of 2004, RIN 1615–AB32
  E. Classification of Certain Scientists of the Commonwealth of Independent States of the Former Soviet Union and the Baltic States as Employment-Based Immigrants, RIN 1615–AB14
  F. Revoking Grants of Naturalization, RIN 1615–AA30
VI. Discussion of Comments Received in Response to the June 5, 2009, Interim Rule
VII. Regulatory Requirements
  A. Administrative Procedure Act
  B. Unfunded Mandates Reform Act of 1995
  C. Small Business Regulatory Enforcement Fairness Act of 1996
  D. Executive Order 12866
  E. Executive Order 13132
  F. Executive Order 12988 Civil Justice Reform
  G. Paperwork Reduction Act
  H. Regulatory Flexibility Act

I. Public Participation

Interested persons are invited to submit written data, views, or arguments on all aspects of this rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of this rule, explain the reason for any recommended change, and include data, information, or authority that support the recommended change.

Instructions: All submissions must include the component name and DHS docket number USCIS–2009–0022. 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 at the Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529–2020.

II. Background

A. Introduction

U.S. Citizenship and Immigration Services (USCIS) receives approximately six million immigration benefit requests each year, comprised of more than fifty types of applications and petitions. USCIS historically accepted paper applications and depended on paper files. These applications and

paper files were the only means for USCIS to adjudicate applications and petitions and that paper-based process, by contemporary standards, was inefficient. Until recently, USCIS processed on paper all immigration benefits, verified the identity of applicants, and provided other government agencies with the information required to quickly identify criminals and possible terrorists.

USCIS is modernizing its processes and systems in light of the development of technology to accommodate and encourage greater use of electronic data submission, to include e-filing and electronic interaction. USCIS will not eliminate paper filing at this time but will convert the data from paper filing to an electronic medium when the completed form is received. USCIS will then operate in an electronic environment fostering greater operational efficiency, provide transparency, and improve access to information through online accounts for those who do business with USCIS.

The Department of Homeland Security (DHS) and USCIS began the transformation of USCIS operations by eliminating regulatory references to filing locations for immigration benefits, thereby permitting USCIS to more rapidly adjust filing locations to meet demand and operational needs and to provide that information on petition and application forms and through other means, such as on the USCIS Web site. *See Removing References to Filing Locations and Obsolete References to Legacy Immigration and Naturalization Service; Adding a Provision to Facilitate the Expansion of the Use of Approved Electronic Equivalents of Paper Forms,* 74 FR 26933 (June 5, 2009) (''Filing Location Rule'').

DHS is expanding on the Filing Location Rule by affording additional flexibility for applicants and petitioners to file, and for USCIS to receive and process, benefit requests, biometrics, and supporting documentation in an electronic environment. For example, amendments in this rule to 8 CFR 103.2(a)(1) (relating to filing), 8 CFR 103.2(a)(7) (relating to receipt dates), and 8 CFR 103.8 (relating to delivery of notices) each replace language geared solely to paper files and benefit requests with language that is equally applicable in a paper or electronic environment.

B. Authority

The Government Paperwork Elimination Act (GPEA), Public Law 105–277, tit. XVII, section 1703, 112 Stat. 2681, 2681–749 (Oct. 21, 1998), 44 U.S.C. 3504 note, provides that, when possible, Federal agencies use electronic forms, electronic filing, and electronic submissions to conduct agency business with the public. GPEA establishes the means for the use and acceptance of electronic signatures. This rule will significantly enhance the ability of USCIS to fully implement GPEA. The Homeland Security Act of 2002, Public Law 107–296, section 102, 116 Stat. 2135 (Nov. 25, 2002), 6 U.S.C. 112, and the Immigration and Nationality Act of 1952, as amended (INA or Act), section 103, 8 U.S.C. 1103, charge the Secretary of Homeland Security with administration and enforcement of the immigration and naturalization laws. DHS implemented an electronic signature provision for immigration benefit filings with USCIS in 2003. *Electronic Signature on Applications for Immigration and Naturalization Benefits,* 68 FR 23010 (April 29, 2003). The Secretary promulgates this final rule under the broad authority to administer the Department of Homeland Security, and the authorities provided under the Homeland Security Act of 2002, the immigration and nationality laws, and other delegated authority.

DHS is also adding new fees to the USCIS fee regulations as required by recent legislation. Effective August 13, 2010, Public Law 111–230 imposes additional fees on certain H–1B and L–1 nonimmigrants. 124 Stat. 2485 (Aug. 13, 2010); New 8 CFR 103.7(b)(1)(v).

C. USCIS Transformation Initiative

USCIS is engaged in an enterprise-wide transformation effort to implement new business processes and to improve service, operational efficiency, and national security. USCIS's new operational environment will employ online accounts, such as those used by many private sector organizations.

Applicants and petitioners will be able to access individualized accounts that will provide electronic access to information on how to apply for benefits, allow easier filing, and permit applicants and petitioners, and their representatives, to track the status of open applications and petitions. Applicants and petitioners will be able to use a secure USCIS Internet Web site to access accounts ''on-demand'' in an electronic service environment available at all times.

USCIS will develop new automated case management tools to access data electronically, prevent the loss of information, and provide adjudicators with a comprehensive view of an alien's immigration history. USCIS's electronic environment will facilitate and expedite information collection, reduce benefit fraud and result in more consistent and efficient decisions. USCIS is supplementing existing paper filing options by adding more user-friendly electronic filing options.

USCIS will improve many of its internal security, operational efficiency, and public service capabilities as transformation proceeds. USCIS will first allow the creation of accounts for various applicants, followed by enhanced e-filing and case management capabilities, and then improve reporting and Freedom of Information Act (FOIA), 5 U.S.C. 552, tools. Once deployed, these tools will be applied and made available to the immigrant, humanitarian, and nonimmigrant applicant populations.

USCIS's transformation to an electronic environment is based on three objectives and long-term benefits: enhanced national security and integrity of filings, public service, and operational efficiency. USCIS's transformation will use modern electronic audit and investigative methods to improve national security and integrity by identifying potential fraud and other risks by effectively collecting, analyzing and sharing information used to verify an alien's or other individual's identity and eligibility for various immigration benefits. USCIS will use a more complete picture of an alien's immigration history by analyzing information across benefit applications, thus exposing those attempting to perpetrate fraud or who are otherwise ineligible for immigration benefits. For example, an applicant's or beneficiary's marital or employment history in an existing agency file or in another pending application may provide relevant information that differs from the information in the application or petition being adjudicated. A responsible and transparent approach toward the handling of such personal information protects the rights of individuals and organizations interacting with USCIS and thereby fosters their trust and cooperation. At the same time, this approach facilitates authorized sharing of information with partner components of DHS—such as U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE)—in a secure environment that better protects against unauthorized disclosures. This approach will facilitate authorized sharing of information with partner agencies—such as the Department of State (DOS) and the Department of Justice (DOJ). In addition, electronic transmission and storage of information is faster, less costly and more secure than the physical movement of paper files.

USCIS will improve public service by adjudicating requests for benefits more accurately and quickly, and by providing more timely and accurate information about immigration benefits and the status of benefit requests. Applicants, petitioners, and their representatives will have access to relevant forms, instructions, case status, and other actions and information through online accounts that organize information and transactions to meet their needs. DHS will continue to ensure the confidentiality of its immigration records in accordance with the requirements of the law, including the Privacy Act, 5 U.S.C. 552a,[1] and 8 CFR 208.6. USCIS's transformation to an electronic environment will enable it to become an innovative and agile organization that better understands its workload and best uses all available resources, investing in its people and infrastructure to ensure cost-effective and consistent results.

D. How Transformation Will Work

USCIS adopted a ''person-centric'' business approach to transformation based on establishing various types of individual and organizational accounts. The key to this approach is encouraging individual applicants, petitioners, beneficiaries, organizations, legal representatives, and others who interact with USCIS to access their own online accounts. Applicants, petitioners, and others will be able to electronically submit benefit requests with supporting documentation, access status information regarding pending benefit requests, change their addresses and contact information, obtain FOIA-related materials, and comply with some registration requirements of the Immigration and Nationality Act.

USCIS's transformation will create an end-to-end electronic adjudicative process encompassing an alien's entire immigration lifecycle, unlike the current process that uses multiple systems and focuses on each individual benefit request. Data initially provided by account holders will be reused, if appropriate, to reduce data entry required for subsequent benefit requests. Additional and revised data will be used to update and enhance account information. Account data submitted to support various immigration benefit transactions will be verified, where feasible and appropriate, through links to other internal and external data systems, potentially reducing the need for applicants and petitioners to provide certain forms of supporting evidence and reducing potential requests for evidence from USCIS.

USCIS's transformation will eventually affect all aspects of USCIS benefit processing operations and technology. This operational concept is intended to standardize processes across USCIS operations relating to case intake, biometrics, background checks, adjudication, scheduling, and notifications. USCIS benefit adjudication operations will be changed incrementally from a paper- and hard copy file-based process to an electronic process, making it possible to process benefit requests more efficiently. With the implementation of these improvements, USCIS will enhance the overall process.

E. Other Regulatory Changes Necessary for the Transformation Initiative

DHS anticipates that additional regulatory changes will be required over the next several years as the transformation of USCIS to an electronic environment progresses. DHS expects, for example, to revise regulations pertaining to filing and handling of immigrant benefit requests to lead to computer system enhancements applied to immigrant applications and benefits. DHS will not make transformation-related changes to 8 CFR part 214 at this time, but will publish a separate rulemaking to address business transformation as well as reorganizing and simplifying that part.

III. The Changes Made by This Rule

DHS is amending those parts of chapter I of 8 CFR that regulate affidavits of support, citizenship and naturalization, employment authorization, nonimmigrant benefits (other than part 214) and related waivers, permanent resident documents, refugee and asylum processing, Temporary Protected Status, and travel documents. These amendments are best understood by the changes effected, rather than as individual amendments to the regulations.

A. Removing Form Title and Number References, and Adding Filing Definitions

DHS is removing references to form numbers and form titles. At this time, USCIS will continue to accept paper submission of most applications, petitions, and benefit requests, although it will phase out references to mandatory use of specific forms for specific purposes in the regulations. Mandating in regulations specific form numbers reduces USCIS's ability to modify its business processes to reflect filing procedures in an electronic environment. Form names and numbers will continue to exist for reference purposes but will not be specifically referenced in the regulations. This rule is an early step in the transformation process and purposely does not remove all form references from all regulations affecting USCIS procedures at this time. Forms identified by number will continue to appear until other parts of DHS regulations are amended to address transformation requirements. The list of prescribed forms will be removed from 8 CFR parts 299 and 499, although USCIS will continue to refer to form numbers on its Internet Web site, at *http://www.uscis.gov,* and public information telephone scripts. DHS components ICE, and CBP will likewise continue to refer to form numbers on their Internet Web sites, *http://www.ice.gov,* and *http://www.cbp.gov.*

In most instances, DHS is removing form names and numbers by replacing the form reference with a generic statement, such as ''the form designated by USCIS.'' Removal of these references from a paragraph or section in some instances, however, requires changes which cannot be achieved through replacement of a term or phrase. In those instances, the entire paragraph is revised.

DHS is removing references to the specific forms known by form numbers: AR–11, G–28, G–325, I–90, I–94, I–102, I–129, I–130, I–131, I–191, I–192, I–193, I–212, I–290B, I–407, I–512, I–539, I–551, I–566, I–589, I–590, I–601, I–602, I–607, I–644, I–688, I–730, I–765, I–797, I–797A, I–797B, I–821, I–854, I–864, I–864A, I–864P, I–865, I–907, I–914, I–917, I–918, N–300, N–400, N–426, N–565, N–600, and N–643. This list is not intended to be exhaustive, nor are all references to the listed forms removed by this final rule. Additional references to these and other USCIS forms will be phased out in subsequent rules. DHS is not removing references to forms that primarily affect the functions of DHS components other than USCIS.

Enumerating OMB control numbers for USCIS information collection requirements in regulations is no longer necessary and, therefore, 8 CFR 100.7 is being removed. OMB control numbers continue to be displayed on USCIS forms pursuant to the Paperwork

[1] The Privacy Act grants United States citizens and lawful permanent residents the right to access and amend their records. DHS policy, as a matter of discretion, permits nonimmigrant aliens equivalent ability to access and correct records. *Memorandum for Directorate and Component Leadership from Hugo Teufel III, Chief Privacy Officer, DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons,* Memorandum 2007–1 (January 19, 2007), found at *http://www.dhs.gov/xlibrary/assets/privacy/privacy_policyguide_2007-1.pdf.*

Reduction Act, 44 U.S.C. 3512, and on the USCIS Internet Web site.

DHS is adding new definitions for ''application,'' ''petition,'' and ''benefit request'' to transition from ''forms'' to either paper or electronic instruments used to seek various immigration benefits. The terms ''application'' and ''petition'' are used together, separately, and interchangeably in many sections of chapter I of the 8 CFR and this rule does not affect every reference to those terms. The term ''benefit request'' is often used in the sections amended by this rule in place of application or petition in the interest of economy of words, to reduce the ambiguity and confusion resulting from the constant use of both terms, improve readability, and to add flexibility for describing what a particular capability may be called when it is converted to an electronic interaction. No substantive change results from defining these terms in this rule.

As the USCIS transformation initiative progresses, electronic versions of forms and digital images of supporting documents will largely replace paper forms and documents for adjudication and records retention purposes. USCIS will specify the process and standards for the transmission of electronic benefit requests and supporting documents on its Internet Web site, but it is intended that these standards will accommodate the technology in most home and public computers so as to be widely accessible.

DHS is adding a definition of ''form instructions'' to establish that the term refers to the most recent, approved version of such instructions available through the USCIS Internet Web site, regardless of the fact that other editions of these instructions may exist and be in circulation through other sources. Whether published in paper form or on the USCIS web site, all form and form instructions will continue to comply with Paperwork Reduction Act requirements, including public notice and comment periods. 44 U.S.C. 3507. In addition to traditional instructions appended to a USCIS form, the term as defined by this rule encompasses the process information (*e.g.,* filing locations, instructions on the process for submission of supporting documents) that USCIS publishes on its Internet Web site in addition to those traditional instructions, and may also include non-form and non-substantive guidance such as appendices, exhibits, guidebooks, or manuals.

USCIS does not publish its Registration for Classification as Refugee, Form I–590, with instructions for the U.S. Refugee Admissions Program (USRAP), for general public use. Access to the USRAP is managed by DOS, and implemented by its overseas processing entities (OPEs). OPEs assist targeted populations of refugee applicants with preparation of the Registration for Classification as Refugee. As such, the term ''form instructions'' includes process information that USCIS publishes about the USRAP.

DHS is adding a definition for the terms ''execute'' or ''executed'' when referring to completion of an application or petition to request a benefit to ensure consistency across paper and electronic media.

B. Removing References to Position Titles Within USCIS

Wherever possible, DHS is removing references to official position titles used within DHS or used in the past by the former Immigration and Naturalization Service (INS). These titles include director, district director, and commissioner as well as position descriptions such as examiner or adjudicator. Both position titles and delegated authority to perform specific duties assigned to USCIS employees are subject to change, potentially rendering regulatory references inaccurate or delaying implementation of planned operational changes. DHS is revising those titles and position descriptions with USCIS, DHS, or other component names, as appropriate and necessary to provide DHS with the operational flexibility required to facilitate adjudication in an electronic environment. DHS is also replacing obsolete references to the Attorney General, substituting the Secretary where appropriate.

DHS is, for example, amending 8 CFR 103.7(d) by removing the specific titles of USCIS employees who are designated to certify official immigration records. DHS and USCIS will delegate authority to appropriate officials who may be required to fulfill this responsibility.

C. Replacing ''Service'' With More Specific Component Names and Removing References to Particular USCIS Offices

The definition of ''Service'' in newly designated 8 CFR 1.2 is amended to provide flexibility and promote the goals of transformation. The regulations in chapter I of the 8 CFR contain provisions that, to varying degrees, govern facets of all of the immigration components of DHS—CBP, ICE, and USCIS. Where DHS has determined that the section being amended by this rule applies only to USCIS, that defined acronym is inserted to replace the previously named office, position, title, or component. Where the section pertains to an action that may have been taken by INS, or a function that is the purview of or shared with another component, the term ''the Service'' is retained or inserted. Thus, ''the Service'' in 8 CFR may refer to any immigration-related component of DHS, including USCIS, ICE, or CBP. As DHS does not purport to revise every paragraph within 8 CFR, the absence of a change to an existing usage of ''Service'' in a particular context does not necessarily indicate a position with respect to component authority in that context. Similarly, remaining references to the former Immigration and Naturalization Service and the acronym INS are replaced by more accurate terms.

D. Removing Information About Procedures for Filing and Internal Processing of Benefit Requests

Some parts of the regulations include details of the internal processing and handling of benefit requests or descriptions relating to submission of paper versions of benefit request forms. Administrative filing requirements, locations, and procedures will not be prescribed in regulations but will be outlined in more flexible methods of conveying instructions. This modification will not change eligibility criteria or evidentiary standards. *See, e.g.,* 8 CFR 212.7(a)(3) (''* * * If the application is approved the director shall complete Form I–607 for inclusion in the alien's file.''). *See also* 8 CFR 214.2(l)(5)(ii)(E), (''* * * The consular officer shall also endorse all copies of the alien's Form I–129S with the blanket L–1 visa classification and return the original and one copy to the alien. When the alien is inspected for entry into the United States, both copies of the Form I–129S shall be stamped to show a validity period not to exceed three years and the second copy collected and sent to the appropriate Regional Service Center for control purposes.'') These details are not essential to the regulations, do not add substantive requirements or impose limitations, and unnecessarily burden the text of the regulations. To the extent that this information is required to be published, 5 U.S.C. 552(a)(1)(A), (B), DHS will publish an organization and functions rule in part 2 of 8 CFR. DHS is removing these types of provisions because they are subject to change during transformation and because such information is more appropriately included within field manuals and other instructional materials that USCIS can readily revise and describe in more detail.

Terms such as ''in writing,'' ''written decision,'' and ''written notice'' have not been removed because an electronic transmission constitutes a valid writing. GPEA provides: ''Electronic records submitted or maintained in accordance with procedures developed under this title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.'' Public Law 105–277, tit. XVII, section 1707, 112 Stat. at 2681–751 (Oct. 21, 1998) . GPEA defines electronic signature as ''* * * a method of signing an electronic message that identifies and authenticates a particular person as the source of the electronic message; and indicates such person's approval of the information contained in the electronic message.'' *Id.* Thus, as provided in GPEA, a notice on the status of a request for benefits, a request for additional evidence, and a notice of approval or denial of a request for benefits may be effected by electronic communication if that method is requested by the person who has requested the benefit, notwithstanding a regulatory provision that requires such notice to be ''in writing.'' Nonetheless, for clarity's sake, 8 CFR 103.8 provides that electronic delivery of notices suffices in appropriate circumstances. *See* new 8 CFR 103.8.

E. Removing Obsolete and Expired Regulatory Provisions; Correcting and Updating Provisions Affected by Statutory Changes

DHS is also removing regulatory provisions that have expired because of statutory lapses or self-executing time limits, or that are obsolete, and to make non-discretionary corrections to provisions affected by statutory amendments or extensions of time. In addition, DHS revises obsolete statutory and regulatory citations.

DHS is adding three paragraphs to USCIS fee regulations to reflect statutory fees which are already collected but which were not previously included in regulations. *See* new 8 CFR 103.7(b)(1)(i)(CCC)–(EEE). The additions provide the $1500 or $750 fee for filing certain H–1B petitions required by the American Competitiveness and Workforce Improvement Act (ACWIA), the additional fee of $500 for filing certain H–1B and L petitions established by Section 426 of the Visa Reform Act of 2004, and the additional $150 fee for H–2B petitions required by the Real ID Act of 2005. *See,* respectively, INA section 214(c)(9)(B), 8 U.S.C. 1184(c)(9)(B); INA section 214(c)(12)(C), 8 U.S.C. 1184(c)(12)(C); INA section 214(c)(13)(C), 8 U.S.C. 1184(c)(13)(B). These fees are used, generally, for training, scholarships, and fraud detection and prevention. INA sections 286(s), (v), 8 U.S.C. 1356(s), (v). USCIS determines liability for both of these fees and calculates the amount due through a series of questions on the H and L petition form. The determination process is unchanged by this rulemaking. Provisions are also added to prescribe a fee of $2000 for certain H–1B nonimmigrants or $2250 for certain L–1 nonimmigrants as required by recent legislation. Public Law 111–230, section 402, 124 Stat. 2488 (Aug. 13, 2010). Fees collected pursuant to these sections are deposited in the General Fund of the Treasury. *Id,* at section 402(c). DHS is not required to publish these fees in the CFR since the statute is clear in requiring their collection and use. Nevertheless, most USCIS stakeholders know to refer to 8 CFR 103.7 for the proper USCIS fees, and DHS believes it is a better practice to make sure that these statutorily mandated fees are also clearly delineated along with the fees established administratively by DHS through rulemaking.

Section 209.1(f) is a companion provision to match the existing provision in 8 CFR 209.2(b), which sets out the process and standards for asylees seeking adjustment of status who require a waiver of inadmissibility. Since both refugees and asylees applying for adjustment of status are subject to identical standards for waivers of inadmissibility these standards are now reflected in this section addressing both types of applicants. INA section 209(c), 8 U.S.C. 1159(c).

Since the statutory cap on adjustment by asylees has been removed, the text referencing that cap—at 8 CFR 209.1(a)(1)(vi) and the sentence that follows—are removed. For the same reason, 8 CFR 209.2(a)(2) is revised by removing the last three sentences of the paragraph. *See* Public Law 109–13, tit. I, section 101(g), 119 Stat. 302 (May 11, 2005), 8 U.S.C. 1101 note.

DHS is revising 8 CFR 209.2(d) to clarify that a medical examination, including compliance with vaccination requirements, is required of asylees applying for adjustment of status. The vaccination supplement no longer exists as a stand-alone document but rather is incorporated into the medical examination. Form instructions provide detailed guidance regarding the medical examination requirement.

DHS is removing 8 CFR 212.8 and 212.9, relating to nonpreference investor visas and to former third and sixth preference employment-based visas, because the provisions are obsolete. The provisions of the Act that provided for these visas were repealed by section 111 of the Immigration Act of 1990, Pub. L. 101–649, 104 Stat. 4978 (Nov. 29, 1990).

DHS is removing 8 CFR 212.11, which regards the admissibility of an alien who has been convicted of a violation of a law relating to a controlled substance because it is redundant. This section provided that in determining the admissibility of an alien who has been convicted of a violation of any law relating to a controlled substance, the term controlled substance as used in section 212(a)(23) of the Act shall mean the same as that referenced in the Controlled Substances Act, 21 U.S.C. 801, *et seq.* Section 212(a)(2) of the Act governs inadmissibility for criminal acts and Section 212(a)(2)(A)(i)(I) specifically includes violations of the Controlled Substance Act. INA section 212(a)(2)(A)(i)(II), 8 U.S.C. 1182(a)(2)(A)(i)(II).

DHS revised Section 244.17 to reflect current policies and procedures for re-registration of TPS beneficiaries.

DHS is removing 8 CFR 245.1(e)(2) as obsolete. This section provided for the adjustment of status of certain nonimmigrant registered nurses in accordance with the Immigration Nursing Relief Act of 1989, Public Law 101–238, 103 Stat. 2099 (Dec. 18, 1989), 8 U.S.C. 1182 note. The application period for this provision ended on March 20, 1995, and USCIS no longer has pending applications related to this provision. This regulation also makes related conforming changes to 8 CFR 245.1(g)(1) and 245.2(a)(5)(ii).

Section 245.9 is removed. This section provided for adjustment of status for certain Chinese nationals pursuant to the Chinese Student Protection Act, Pub. L. 102–404, 106 Stat. 1969 (Oct. 9, 1992). The application period for this provision ended June 30, 1994, and USCIS no longer has pending applications related to this provision. *Id.*

Section 245.12 is removed. This section provided for adjustment of status for certain Polish and Hungarian parolees pursuant to section 646 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009 (Sep. 30, 1996). Persons eligible for benefits under this provision must have been paroled into the U.S. prior to December 31, 1991. USCIS has not received applications pursuant to this section for several years and is unlikely to receive any in the future. Public Law 104–208, 110 Stat. 3009 (Sep. 30, 1996).

Section 245.13 is removed. This section provided for adjustment of status for certain nationals of Nicaragua and Cuba pursuant to section 202 of the Nicaragua Adjustment and Central American Relief Act, Public Law 105–100, 111 Stat. 2160, 2193 (Nov. 19, 1997). The application period for benefits under this provision ended April 1, 2000. USCIS no longer has pending applications pursuant to this provision. *Id.*

Section 245.20 is removed . This section provided for adjustment of status of Syrians granted asylum under the Syrian Adjustment Act, Public Law 106–378, 114 Stat. 1442 (Oct. 27, 2000). Eligibility under this provision required entry prior to Dec. 31, 1991. USCIS no longer has pending applications pursuant to this provision and is unlikely to receive any in the future.

Section 245.21 is revised because the Consolidated Appropriations Act of 2005 amended the Indochinese Parolee Act to eliminate the 3-year filing window and 5,000 visa limit.

Parts 264 and 265 are revised to encompass management of fingerprinting, registration, and address reporting requirements in an electronic environment and to remove obsolete references.

This rule adds 8 CFR 316.6 and revises 8 CFR 316.5, 8 CFR 322.2, and 8 CFR 341.5 to conform to the amendments to the Act by the National Defense Authorization Act (NDAA 2008), Public Law 110–181, 122 Stat. 3 (Jan. 28, 2008). The NDAA 2008 provides certain immigration benefits for any qualifying spouse or child of a member of the Armed Forces. Specifically, the NDAA 2008 amended section 319(e) of the Act; 8 U.S.C. 1430(e), to allow certain spouses of members of the Armed Forces to count any qualifying time abroad as continuous residence and physical presence in the United States for purposes of naturalization and to permit such naturalization to occur outside the United States. INA section 319(e), 8 U.S.C. 1430(e); INA section 322(d), 8 U.S.C. 1433(d); 8 U.S.C. 1443a.

This rule revises 8 CFR 319.3 to conform to the amendments to the INA by the National Defense Authorization Act (NDAA 2004), Public Law 108–136, 117 Stat. 1565 (Nov. 24, 2003), which provides certain immigration benefits relating to the naturalization of any qualifying surviving child or parent of a member of the Armed Forces. Specifically, NDAA 2004 provides for the naturalization of any qualifying surviving child or parent of a member of the Armed Forces who dies during a period of honorable service, a benefit only previously afforded to surviving spouses. INA section 319(d), 8 U.S.C. 1430(d).

This rule revises 8 CFR 322.3 to conform to the various legislative amendments to the Act. Specifically, 8 CFR 322.3(a) was revised to conform to the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, enacted on November 2, 2002, which amended section 322 of the Act to allow U.S. citizen grandparents and U.S. citizen legal guardians to apply for naturalization on behalf of a child born and residing outside of the United States. Public Law 107–273, 116 Stat. 1758 (Nov. 2, 2002); *see* INA section 322, 8 U.S.C. 1433(a). Such an application by the U.S. citizen grandparent or U.S. citizen legal guardian can be made within 5 years of the death of a U.S. citizen parent of a child who could otherwise have been the beneficiary of an application for naturalization under section 322 of the Act. *See Id.* This change will conform the regulations to legislation and current practice.

In addition, current 8 CFR 322.3(a) requires the citizen parent (or, as appropriate, grandparent or guardian) to include with the application a request concerning when the applicant would like to have the child's naturalization interview scheduled. The form instructions elicit the information needed to schedule the interview. Therefore, there is no need for a separate provision on this point in 8 CFR 322.3(a).

This rule revises 8 CFR 322.3(b) to conform to the amendments to the Act made by the Intercountry Adoption Act of 2000, Public Law 106–279, which added a definition of certain adoptees to section 101(b)(1)(G) of the Act on October 6, 2000. 114 Stat. 825 (Oct. 6, 2000). The new definition describes children adopted in a foreign state that is a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of May 22, 1993. INA section 101(b)(1)(G), 8 U.S.C. 1101(b)(1)(G). That definition under section 101(b)(1)(G) of the Act corresponds to the visa categories IH–3 and IH–4 and became effective when the Hague Adoption Convention entered into force in the United States on April 1, 2008. *See id.* USCIS implemented the Intercountry Adoption Act by publishing an interim rule, ''Classification of Aliens as Children of United States Citizens Based on Intercountry Adoptions Under the Hague Convention,'' on October 4, 2007. *See* 72 FR 56831 (Oct. 4, 2007). The additional changes in this rule conform to the requirements codified on that date and which have been followed since April 1, 2008.

In addition, several expired and obsolete naturalization-related regulatory provisions have been removed, including 8 CFR: 312.3(a) (standardized citizenship testing), 329.5 (natives of the Philippines with active duty service during World War II), 332.2 (establishment of photographic studios), 334.16–334.18 (naturalization petitions), 335.11–335.13 (naturalization petitions), 338.11 and 338.12 (naturalization court processes), 339.2(c) (reports relating to petitions filed prior to October 1, 1991), and 340.1 (reopening of a naturalization application by a district director pursuant to section 340(h) of the Act).

In 8 CFR 312.3, paragraph (a) is removed because the ''standardized citizenship testing'' for applicants for naturalization ended on August 30, 1998. *See* 63 FR 25080 (May 6, 1998).

Section 329.5 is removed because the filing period for submitting an application for naturalization under section 405 of the Immigration Act of 1990, the corresponding statutory naturalization authority, expired on February 3, 1995. *See* 8 CFR 329.5(e).

Sections 334.16–334.18, 335.11–335.13, and 339.2(c) are removed because they relate to any ''petition for naturalization'' filed prior to October 1, 1991. Such petitions were under the jurisdiction of the naturalization court until that date. *See* 8 CFR 310.4; INA section 310, 8 U.S.C. 1421.

F. Revising or Reorganizing Sections or Paragraphs for Clarity and Consistency, and To Remove Duplicative Information

DHS is reorganizing 8 CFR part 1 (Definitions) and 8 CFR part 103 (Immigration Benefits, Biometric Requirements, Availability of Records), without substantive change. The reorganization of these sections does not introduce new obligations, requirements, or procedures. The reorganization is designed to simplify and rearrange existing regulatory requirements in a manner which is easier for the public to identify and understand. This rulemaking also removes regulatory provisions which repeat statutory or other regulatory information or which restate filing information that USCIS routinely includes in its form instructions. None of the changes made effect a substantive change in the law. DHS is also reorganizing certain parts of 8 CFR without substantive change. DHS intends, in the recodification of these regulations, to conform to the understood policy, intent, and purpose of the original regulations, with such

amendments and corrections as will remove ambiguities, contradictions, and other imperfections.

The regulations pertaining to filing and adjudication of immigration benefits are contained in 8 CFR 103.2. That section also incorporates the specific requirements contained in USCIS form instructions. *See* 8 CFR 103.2(a)(1). Repeating or paraphrasing parts of this information within other regulations that relate to specific benefits is unnecessary, possibly confusing, and may be inaccurate. Such repetition can lead the reader to conclude that a provision is somehow uniquely applicable to that particular benefit type. For example, ''* * * The director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist his or her adjudication'' is repetitive information found within another regulation. *See* 8 CFR 214.2(h)(9)(i). Or, ''* * * A copy of a document submitted in support of a visa petition filed pursuant to section 214(d) of the Act and this paragraph may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped, in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service'' is both repetitive and inaccurate because the referenced paragraph and procedure no longer exist. *See also* 8 CFR 214.2(k)(1).

This rule organizes 8 CFR part 103 into four subparts: subpart A—Applying for Benefits, Surety Bonds, Fees; subpart B—Biometric Requirements; subpart C—Reserved; and subpart D—Availability of Records.

Section 103.1 is removed. The delegation of authority, formerly found in 8 CFR 103.1(a), was redundant of authority specified in 8 CFR 2.1. Section 103.2(a) is revised, primarily to describe alternate procedures for electronic submission of benefit requests with digital images of supporting documentation. With the definition of ''benefit request'' added in 8 CFR part 1, the terms ''application'' and ''petition'' are being replaced by the term ''benefit request'' to reduce possible confusion regarding the use of specific paper versions of forms traditionally required to apply for benefits. As stated earlier, the terms ''petition'' and ''application'' are not being replaced throughout the rest of this chapter I and will be accorded the meaning now ascribed to them in 8 CFR part 1. Although this paragraph was recently revised, the additional changes made by this rule will clarify filing procedures for both the current environment and the electronic environment.

Section 103.2, paragraph (a)(7) is revised to describe establishment and recordation of filing dates for benefit requests in an electronic environment. That paragraph had previously described procedures that reflected regular mail, hand delivery, and internal actions of USCIS for physically handling paper, such as stamping files with dates by hand. Specific internal procedures for determining how receipt dates and times are to be associated with a particular benefit request for which date and time are appropriate, or even essential, will be established for requests that will be received electronically, in paper format, or both. USCIS realizes that the date of filing is very important when a benefit request has a deadline or a date-specific impact on eligibility. Such benefit requests are not affected by this rule because the date the benefit request is received by USCIS will still be recorded in the system. While the internal process for recording the date when a request is received or complete will not be promulgated, the ability of filers of a benefit request to obtain a definitive receipt date will not be affected by removing the requirement for USCIS to stamp receipt dates.

In addition, 8 CFR 103.2(a)(7) is revised to eliminate possible inconsistency with 8 CFR 103.2(a)(1), clarifying that USCIS may reject a benefit request if data have not been entered in required fields. Further, 8 CFR 103.2(a)(7)(iii) is added to codify the current policy that there is no appeal when a case is rejected in accordance with this section. In USCIS parlance, the term ''rejected'' means that the benefit request and fee payment are returned for failure to comply with all filing requirements without being fully considered, and can be re-filed when properly completed, while ''denied'' means that the request is fully adjudicated and considered, and the applicant is determined ineligible for the benefit sought. Appeals of rejections are generally returned without consideration. Therefore, this change is only clarifying and has no substantive effect.

Section 103.2(b)(1) is revised to update terminology and to clarify that every applicant or petitioner must remain eligible for the benefit request at the time of adjudication and that every benefit request must be submitted with all prescribed supporting documentation. USCIS longstanding policy and practice, as well as a basic tenet of administrative law, is that the decision in a particular case is based on the administrative record that exists at the time the decision is rendered. *Citizens to Preserve Overton Park* v. *Volpe,* 401 U.S. 402 (1972). Thus, the granting of any benefit request by DHS is not based solely on what is provided at the time of the initial request and is contingent on the fact that circumstances will not change during the processing of a benefit request in such a way so as to render the applicant ineligible. This change will reduce any confusion that may exist for those who believe that eligibility is based solely on what is provided at the time of the initial request and instead will clarify that eligibility is subject to change if circumstances change while processing occurs. This clarification may be especially important in the transformed electronic environment. This revision is not a substantive change in eligibility criteria and is thus appropriate for this final rule.

Sections 103.2, paragraphs (b)(4) and (b)(5) are revised to refer applicants and petitioners to form instructions and other sources for information on the format in which supporting documentation must be submitted. It is generally unnecessary to specify the form that an evidentiary document must be in unless a higher degree of authenticity is required than a photocopy or reasonably legible facsimile. The form instructions for a benefit request will clearly spell out when a copy, original, certified, notarized, or other specific type of document is required to meet the applicable evidentiary standard. In its transformation initiative, DHS wants to accept and use scanned or electronic documents whenever possible and believes that this approach will also be the most convenient method for the public. As stated, regulatory provisions that reflect a paper application process impede that goal. Allowing a digital format instead of a copy would not affect a person's eligibility for a benefit. Thus, this change is made without prior public comment.

This rule also eliminates express reference to Form G–884, currently used to request the return of original documents, and advises the public to follow USCIS instructions for requesting such documents. Eliminating reference to a specific form promotes greater regulatory flexibility and better accommodates future processing efficiencies. USCIS anticipates using the current form for several years during the transformation process and will continue to provide instructions for requesting the return of paper documents retained in DHS files through its Internet Web site, the USCIS

Customer Service Center, or other methods. *See* new 8 CFR 103.2(b)(4).

Section 103.3 is amended by revising the term ''shall file'' to read ''must submit'' and revising the phrase ''with the office where the unfavorable decision was made'' to read ''as indicated in the applicable form instructions'' in the last sentence in paragraph (a)(2)(i). This change will make this section more consistent with the changes made and terminology used in the Filing Location Rule. The word ''shall'' is less clear than ''must'' so substituting ''must'' clarifies the provision without changing the clear meaning. While the terms ''file'' and ''filing'' are not changed throughout 8 CFR by this rule, the amendment is apt in this instance for clarity because the term ''file'' seems to imply a paper environment, as opposed to ''submit,'' which lends itself more clearly to both paper and electronic submissions. The provision requiring submission to a certain office location is removed in favor of form instructions which, as defined in this rule, will provide the flexibility to centralize or otherwise shift appeals based on future needs and developments. No substantive change is made to eligibility requirements.

As transformation progresses, USCIS develops system interfaces with other government information systems, reducing reliance on various forms of documentation currently supplied by benefit applicants. For example, proof of military service is more readily obtained by USCIS directly from the Department of Defense than from the applicant. Section 103.2, paragraph (b)(5) has been amended to clarify that USCIS may waive submission of documentation that it may obtain through direct interfaces.

Section 103.5a is redesignated as 103.8 and revised. This revision provides for electronic delivery of notices instead of paper notices in appropriate circumstances at the petitioner's or applicant's request. Absent such a request, a mailed paper notice remains the default option at this time. Amendments to the descriptions of routine and personal service used for delivery of notices now include a specific provision for the use of electronic media for such purposes. For consistency of process, this rule amends other sections to remove specific requirements of notice and instead cross references the notice and service provisions in 8 CFR 103.8.

Section 103.5b is redesignated as 103.9 and revised. References to Form I–824, currently used to request further action on an approved benefit request, are removed. As transformation progresses, it is envisioned that the need for this form will diminish because account holders will request the services currently provided by the form by accessing their own accounts.

Section 103.7, paragraph (d) is amended to remove specific references to officials authorized to certify immigration records. This change will give USCIS flexibility to delegate authority for this activity to various officials as necessary for efficiency.

Section 103.2, paragraph (e), relating to fingerprint requirements, is revised and redesignated as sections 103.16 and 103.17. These sections have been reorganized and revised to reflect that most USCIS biometric collection is now accomplished digitally at USCIS offices. Paragraph (c) of 8 CFR 103.2, explaining the consequences of failure to provide biometric information, must be read in conjunction with 8 CFR 103.2(b)(13), which provides standard exceptions for such failure. This regulation removes references to specific offices where applicants must report for biometrics collection to allow USCIS greater flexibility for handling such matters. USCIS will continue to provide such information through other means.

Newly designated 8 CFR 103.17 describes biometric service fee collection requirements formerly described in 8 CFR 103.2(e). Revisions to this section more clearly reflect existing regulatory requirements regarding the authorized collection of biometrics.

Sections 103.8 through 103.11 and sections 103.21 through 103.36, which pertain to Freedom of Information and Privacy Act requests, are removed because they are outdated. Current DHS policies and procedures on these subjects are contained in 6 CFR part 5. New 8 CFR 103.42 has been added to direct readers to the DHS regulations.

Regulations relating to submission and consideration of benefit requests are located at 8 CFR 103.2(a)(1) (general filing instructions), 8 CFR 103.2(b)(1) (demonstrating eligibility for the benefit), 8 CFR 103.2(b)(16)(ii) (consideration of evidence in discretionary decisions), and in the form instructions such as for Form I–129 ''* * * By signing this form you have stated, under penalty of perjury (28 U.S.C. 1746) that all information and documentation submitted with this form are true and correct. You have also authorized the release of any information from your records that USCIS may need to determine eligibility for the benefit you are seeking and consented to USCIS verification of such information.'' Accordingly, because processing and handling information which is broadly applicable to all USCIS benefit types is set forth in both 8 CFR 103.2 and in the instructions to various forms, USCIS is removing such information from regulations governing consideration of specific benefits.

Section 207.1(a) is revised to instruct prospective applicants to ''submi[t] an application, including biometric information, in accordance with form instructions.'' The term ''form instructions'' is in turn defined in 8 CFR 1.2 as those prescribed by USCIS on its official Internet Web site currently, notwithstanding other versions in circulation, and may also include non-form guidance such as appendices, exhibits, guidebooks, or manuals. In the context of the U.S. Refugee Admissions Program (USRAP), USCIS does not publish its Form I–590, with instructions, for general public use. Instead, access to the USRAP is managed by the DOS, and implemented by its contracted overseas processing entities (OPEs). OPEs assist targeted populations of refugee applicants with preparation of the Form I–590. As such, the term ''form instructions,'' as defined in 8 CFR 1.2 and used in 8 CFR 207.1(a), does not refer to traditional instructions appended to a USCIS form, but rather the process information that USCIS publishes about the USRAP.

Sections 207.1, paragraphs (b) and (c) are revised by consolidating the existing firm resettlement rule in paragraph (b) and removing paragraph (c). To emphasize the legal relevance of the firm resettlement analysis, this revision moves the third sentence of original paragraph (b) to the forefront. This consolidated provision more clearly articulates that the ''considerations'' enumerated in new paragraphs (b)(1) through (b)(3) apply to the firm resettlement analysis generally and not, as may be misconstrued from the existing, bifurcated structure, only to an analysis of whether an applicant is ''not firmly resettled.'' No substantive changes are made by these structural modifications of the firm resettlement rule.

Re-numbered paragraph 207.2(a) has also been re-titled from ''hearing'' to ''interview,'' to better reflect the nature of USCIS interaction with refugee applicants. No substantive change is intended.

Section 207.7(d) is amended by eliminating an outdated, transitional, alternative date (February 28, 2000) for measuring the 2-year deadline by which such petitions must be filed; there is no change to the discretionary extension for humanitarian reasons. Lastly, in anticipation of future processing efficiencies afforded by transformation, this rule eliminates an express

requirement that ''separate'' petitions be filed for each qualifying family member, in favor of guidance that petitioners file ''in accordance with the form instructions.'' USCIS contemplates retaining in the ''form instructions'' the requirement that ''separate'' petitions be filed for each qualifying family member, until such time that USCIS has in place transformed systems to promote additional processing efficiencies such as consolidating petitions for qualifying family members. This change will accommodate the adoption of such efficiencies without need for a future rulemaking.

Section 207.7(f)(3) is amended by adding an opening phrase to the last sentence, ''[f]or a derivative inside or arriving in the United States.'' While this section, entitled ''Benefits,'' applies to both paragraphs (f)(1) (derivative in the United States) and (f)(2) (derivative outside the United States), the last sentence was added to clarify that the benefit of employment authorization, incident to refugee status, becomes available to overseas beneficiaries, not upon approval of the family petition, but upon travel and their admission into the United States as refugees.

Section 208.1(b) is revised by replacing ''The Director of International Affairs'' with ''The Associate Director of USCIS Refugee, Asylum, and International Operations (RAIO)'' where it first appears and with ''Associate Director of RAIO'' in later references. Similarly, section 208.2(a) is revised by replacing ''Office of International Affairs'' in the title with ''Refugee, Asylum, and International Operations (RAIO),'' and by replacing ''the Office of International Affairs'' wherever it appears with ''RAIO.'' As stated earlier this rule removes specific officers' titles, functions, and authorities where possible, and employee authorities are generally established pursuant to 8 CFR section 2.1. However, DHS has determined that the roles, functions, and authorities of asylum officers and who they report to are sufficiently distinct as provided in the INA so as to preclude substitution of USCIS for those titles where they appear in the Code of Federal Regulations. For example, INA section 235(b)(1)(E), 8 U.S.C. 1225(b)(1)(E), under the expedited removal statute, defines ''asylum officer'' as an ''* * * immigration officer who (i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 208, and (ii) is supervised by an officer who meets the conditions described in clause (i) and has had substantial experience adjudicating asylum applications.'' Retaining these titles is not expected to impair USRAP and RAIO from applying the principles of transformation to their operations in the future.

Section 208.5(b)(1)(ii) is revised to perfect an amendment made in the Filing Location Rule. In that rule, 8 CFR 208.4(b) was revised by referring applicants to the instructions on the Form I–589 for specific filing information and thereafter by eliminating specific instructions contained in former sections 208.4(b)(1)–(5). This rule implements a conforming amendment to that earlier revision by removing the phrase ''pursuant to § 208.4(b)'' in the last sentence of 8 CFR 208.5(b)(1)(ii).

Moreover, the Filing Location Rule replaced the term ''district director'' with ''DHS office'' in two locations. With the elimination of the reference to the ''district director'' in former 8 CFR 208.4(b)(5) (relating to asylum applications filed with the district director), the remaining reference to ''the DHS office'' in new 8 CFR 208.5(b)(1)(ii) lacks an anchor to an earlier reference. To avoid confusion as to whether a specific DHS office is empowered under this provision, 8 CFR 208.5(b)(1)(ii) is revised by replacing ''the DHS office'' with simply ''DHS'' wherever it appears.

Section 208.7(c) is amended by replacing a mandatory requirement (if applicable) to submit ''proof that he or she has continued to pursue his or her asylum application before an immigration judge or sought administrative or judicial review.'' In anticipation of future system efficiencies afforded by transformation that may allow USCIS to gather the data directly from the Executive Office for Immigration Review (EOIR) within the Department of Justice and federal courts, USCIS is modifying this provision by replacing the mandatory production requirement with more flexible text: ''* * * USCIS may require that an alien establish * * *''. Until such time that system improvements are in place, USCIS will continue to require production of such evidence and will communicate such requirements through form instructions, as defined in 8 CFR 1.2.

Section 208.21(c) is amended by removing an outdated, transitional, alternative date (February 28, 2000) for measuring the 2-year deadline by which such petitions must be filed; there is no change to the discretionary extension for humanitarian reasons. Lastly, in anticipation of future processing efficiencies afforded by transformation, this rule eliminates an express requirement that ''separate'' petitions be filed for each qualifying family member, in favor of ''in accordance with the form instructions.'' USCIS contemplates retaining in the ''form instructions'' the requirement that ''separate'' petitions be filed for each qualifying family member, until such time that USCIS has in place transformed systems to promote additional processing efficiencies such as consolidating petitions for qualifying family members.

Section 208.21(d) is revised similar to section 208.21(c) and for the same reasons.

Section 209.1(c) is amended by removing the last clause relating to a vaccination supplement completed by a designated civil surgeon. USCIS recently consolidated the separate vaccination supplement and record of the medical examination into one form, Report of Medical Examination and Vaccination Record. Thus the language referring to a separate supplement is outdated. Relevant guidance will continue to be available in form instructions. This language is also deleted in anticipation of future processing efficiencies wherein civil surgeons may have online accounts through which they may submit reports directly to USCIS instead of completing paper forms.

Section 209.2(e) is revised by removing the first two sentences of the original paragraph, retaining only the last sentence. In the original paragraph, there was an internal inconsistency between the first sentence (requiring interview of all applicants) and the third sentence (allowing USCIS to determine whether an interview was warranted). This revision retains only the sentence that allows USCIS to determine on a case-by-case basis whether an interview is warranted. This result is consistent with the companion paragraph at existing 8 CFR 209.1(d) (refugee adjustment interviews) and current USCIS practice.

Section 209.2(f) is revised for purposes of plain language. To align with the companion paragraph at 8 CFR 209.1(e), text was added stating that USCIS will notify a denied applicant of the right to renew an adjustment request in removal proceedings before EOIR. Otherwise, no substantive change is intended.

Section 223.2 is reorganized and revised for clarity in addition to removing references to forms. The revision also clarifies existing authority to accept and process requests for refugee travel documents overseas.

Several paragraphs within 8 CFR part 264 are revised and reorganized for

clarity. Section 264.1 (registration and fingerprinting requirements) is revised and reorganized, removing obsolete instructions, general information duplicated in 8 CFR 103.2, and fingerprinting requirements now described in 8 CFR 103.16. Section 264.5, paragraph (d) (replacement of permanent resident cards for conditional residents) is revised to remove information included on the form instructions for Form I–90. New 8 CFR 264.5(h) is added to replace information previously located in 8 CFR 264.1(h). Section 264.6 is revised to remove obsolete instructions and for clarity.

IV. Discussion of Comments Received in Response to the April 29, 2003, Interim Rule

DHS published an interim rule with request for comments revising 8 CFR 103.2(a)(2) to permit submission of benefit requests with an electronic signature when such requests are submitted in an electronic format rather than on a paper form. *Electronic Signature on Applications and Petitions for Immigration and Naturalization Benefits,* 68 FR 23010 (April 29, 2003). That rule implemented the electronic filing and the acceptance of electronic signatures requirement of GPEA and meet the requirements of section 461 of the Homeland Security Act of 2002 for a study of the feasibility of online filing and to establish an electronic tracking system for applications in order to provide applicants with access to the status of their applications. Public Law 107–296 title IV, subtitle E, section 461, 118 Stat. 2202 (Nov. 22, 2002), 6 U.S.C. 278.

USCIS received 13 public comments relating to the interim rule. Virtually all commenters supported the use of electronic signatures and urged USCIS to do more to promote a more robust and user-friendly electronic filing environment. Several of the commenters made specific proposals recommending enhancements to the current limited electronic filing procedures available to applicants and petitioners. Various commenters suggested enhancements to the electronic filing process, such as acceptance of credit cards for electronic payment, re-use of data for subsequent transactions, interfaces and compatibility with commercial immigration software, standards for electronic submission of supporting documents, provisions for attorney-client electronic collaboration in the preparation of benefit requests, improvements to current biometric collection procedures, and protection of the privacy of data. DHS encourages these types of comments in response to this rulemaking. The comments will not be addressed here individually because they exceed the scope of the interim rule, which was limited to the electronic signature process. The broad subject of the comments, electronic filing of USCIS benefit requests, will be more fully addressed as the USCIS transformation progresses.

Several commenters raised concerns about the security of electronic signatures and described the pros and cons of various existing technologies. The interim rule did not specify the technology which will be employed by USCIS for the capture and verification of electronic signatures. As the transformation initiative is implemented, USCIS will explore alternatives and adopt an appropriate solution which is fully compliant with DHS security standards and ensures privacy. Therefore, no changes are made to the interim rule as a result of the comments received and the interim rule is adopted as final without change.

V. Discussion of Other Interim Final Rules Being Finalized

USCIS conducted a review of current and past agency regulatory activities and identified six interim rules for which no public comments were received and which were never completed as final rulemakings. Because some of the provisions of these interim rules are now either expired or further modified by this rulemaking, DHS is adopting them as final and, where appropriate, removing or revising the regulatory language. The interim rules that are adopted as final include:

- Application for Refugee Status; Acceptable Sponsorship Agreement Guaranty of Transportation, 64 FR 27660 (May 21, 1999);
- Adjustment of Status for Certain Syrian Nationals Granted Asylum in the United States, 66 FR 27445 (May 17, 2001);
- Eliminating the Numerical Cap on Mexican TN Nonimmigrants, 69 FR 11287 (March 10, 2004);
- Allocation of H–1B Visas Created by the H–1B Visa Reform Act of 2004, 70 FR 23775 (May 5, 2005);
- Classification of Certain Scientists of the Commonwealth of Independent States of the Former Soviet Union and Baltic States as Employment-Based Immigrants, 70 FR 21129 (April 25, 2005); and
- Revoking Grants of Naturalization, 65 FR 17127 (March 31, 2000).

A summary of, the legal authority for, the public comments received on, and the changes made to each of these interim rules is as follows:

A. Application for Refugee Status; Acceptable Sponsorship Agreement Guaranty of Transportation, RIN 1615–AA24

This interim rule required that all sponsorship agreements be secured before an applicant is granted admission as a refugee at a U.S. port-of-entry (POE). This is a separate decision from whether or not such persons can be admitted to the U.S. in refugee status. This rule permits advantageous treatment for applicants for refugee status who have their eligibility interviews with a DHS officer scheduled before a sponsorship agreement has been secured.

This rule implemented section 702 of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, 104 Stat. 4978 (Nov. 29, 1990). It allowed a U.S. citizen, a lawful permanent resident petitioner, or an alien applicant for permanent resident status to seek an exemption from the general prohibition against approval of immigration benefits based upon a marriage entered into while the beneficiary or applicant was under deportation, exclusion or related judicial proceedings. The rule established procedures to allow persons with bona fide marriages to obtain immigration benefits without complying with the two year foreign residency requirements instituted by the Immigration Marriage Fraud Amendments of 1988 (IMFA). This rule amended 8 CFR 204.2 and 245.1. USCIS is not modifying these provisions in the current rule.

The Act authorized the Attorney General to admit refugees to the United States under certain conditions. INA section 207, 8 U.S.C. 1157. There is no requirement for an applicant to have secured sponsorship in advance of a determination that he or she meets the Act's definition of refugee. INA section 101(a)(42), 8 U.S.C. 1101(a)(42). This rule clarified that sponsorship is a requirement separate and apart from the determination that an applicant is classified as a refugee.

USCIS received no comments on this interim final rule.

The interim rule amended 8 CFR 207.2. That section is revised further by this rule to accommodate transformation by removing form numbers, job titles, extraneous provisions, and internal procedure. USCIS has not changed the substance of the provisions added by the interim rule.

B. Adjustment of Status for Certain Syrian Nationals Granted Asylum in the United States, RIN 1615–AA57

This rule provided adjustment of status to lawful permanent residents for

certain nationals of Syria. The interim rule discusses the eligibility requirements and sets forth procedures for the application of persons wanting to adjust their status.

The Act provides that all aliens granted asylum are eligible to apply for adjustment of status 1 year after being granted asylum, subject to a maximum of 10,000 per year. INA section 209, 8 U.S.C. 1159. Pub. L. 106–378, 114 Stat. 825 (Oct. 27, 2000), waived the annual limit for a group of Jewish Syrian nationals who were allowed to depart Syria and enter the United States after December 31, 1991, and who were subsequently granted asylum in the United States.

No public comments were received.

This final rule removes 8 CFR 245.20 which was added by the interim rule. That provision is obsolete because no eligible applicants remain.

C. Eliminating the Numerical Cap on Mexican TN Nonimmigrants, RIN 1615–AA96

This interim rule eliminated the annual numerical cap on Mexican Professionals under the North American Free Trade Agreement (NAFTA). It also eliminated the petition for a Mexican-based NAFTA professional and the corresponding labor condition application (LCA) requirement. Mexican citizens who come to the U.S. under a TN classification must apply directly to DOS for a visa. DOS will then adjudicate the alien's eligibility for TN classification. Upon approval and issuance of a visa, the alien may then apply for admission to the United States. These changes to the regulations are consistent with NAFTA's requirement that the annual numerical cap and petition provisions for Mexican professionals sunset by January 1, 2004.

On December 17, 1992, the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA), which entered into force on January 1, 1994. Public Law 103–182, title I, section 101, 107 Stat. 2061 (1993), 19 U.S.C. 3311. NAFTA allows for the temporary entry of qualified businesspersons from each of the parties to the agreement. *See* Public Law 103–182, title III, section 341(a), 107 Stat. 2116 (1993), 19 U.S.C. 3401. Professionals under the NAFTA are admitted to the United States as Trade NAFTA (TN) nonimmigrant aliens. INA section 214(e), 8 U.S.C. 1184(e). In Appendix 1603.D.4 of NAFTA, NAFTA established an annual numerical ceiling of 5,500 on Mexican TN admissions for a period of 10 years. NAFTA Appendix 1603.D.4, INA section 214(e)(4), (5), 8 U.S.C. 1184(e)(4), (5). The interim rule eliminated the annual numerical cap for citizens of Mexico seeking a TN visa as required by expiration of the 10-year period. *Id.*

No public comments were received.

This rule finalizes the interim rule without change.

D. Allocation of Additional H–1B Visas Created by the H–1B Visa Reform Act of 2004, RIN 1615–AB32

This interim rule implemented changes made by the Omnibus Appropriations Act for Fiscal Year 2005 to the numerical limits of H–1B nonimmigrant visa category and the fees for filing of H–1B petitions. It also: (1) Informed the public of procedures USCIS used to allocate in fiscal year 2005, as well as for the future fiscal years starting with fiscal year 2006; (2) amended and clarified the process that USCIS will use in the future in allocating all petitions subject to numerical limitations under the Act; and (3) alerted the public about additional fees that must accompany certain H–1B petitions.

An H–1B nonimmigrant is an alien employed in a specialty occupation or a fashion model of distinguished merit and ability. INA section 101(a)(15)(H), 8 U.S.C. 1101(a)(15)(H); 8 CFR 214.2(h)(4). A specialty occupation requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum qualification for entry into the United States. *Id.* The Act provides that the number of nonimmigrants who may be issued H–1B visas or granted H–1B status may not exceed 65,000 per fiscal year. INA section 214(g), 8 U.S.C. 1184(g). The 65,000 cap does not include H–1B employees of institutions of higher education, nonprofit research organizations, or governmental research organizations. The H–1B Visa Reform Act of 2004 added a third exception to the 65,000 limit, by providing that an additional 20,000 visas would be available for an alien who has earned a master's or higher degree from a United States institution of higher education. Omnibus Appropriations Act for Fiscal Year 2005, Public Law 108–447, div. J, title IV, 118 Stat. 2809 (Dec. 8, 2004); INA section 214(g)(5)(C), 8 U.S.C. 1184(g)(5)(C). This law also raised the American Competitiveness and Workforce Improvement Act of 1998 fee (ACWIA) to $1,500 or $750, depending on the size of the employer, and imposed a $500 fraud prevention and detection fee (fraud fee) on certain employers filing H–1B petitions. *Id;* INA section 214(c)(9), 8 U.S.C. 1184(c)(9). These fees are required in addition to the base USCIS filing fee.

No public comments were received.

This rule finalizes the interim rule without change.

E. Classification of Certain Scientists of the Commonwealth of Independent States of the Former Soviet Union and the Baltic States as Employment-Based Immigrants, RIN 1615–AB14

This interim rule codified the new sunset date of September 30, 2006, for the Soviet Scientists Immigration Act of 1992 (SSIA). The SSIA allowed USCIS to allot visas to eligible scientists or engineers of the independent states of the former Soviet Union and the Baltic states with expertise in nuclear, chemical, biological, or other high-technology field or defense projects. The rule also codified a new numerical limit of 950 visas (excluding spouses and children if accompanying or following to join).

The SSIA provided that up to 950 immigrant visas may be allotted to eligible scientists or engineers of the independent states of the former Soviet Union and the Baltic states if the scientists or engineers had expertise in nuclear, chemical, biological or other high technology fields or were working on such high technology defense projects, as defined by the Attorney General. Public Law 102–395, title VI, section 610, 106 Stat. 1874 (Oct. 6, 1992); INA section 203(b)(2)(A), 8 U.S.C. 1153(b)(2)(A). This program expired on October 24, 1996. The Foreign Relations Authorization Act, Fiscal Year 2003 reinstated the program and, among other changes not applicable to this interim rule, provided that it would expire 4 years from the date of enactment. Public Law 107–228, div. B, title XIII, section 1304(d), 116 Stat. 1437 (Sept. 30, 2002); INA section 203(b)(2)(A), 8 U.S.C. 1153(b)(2)(A).

No public comments were received.

This rule removes provisions pertaining to the SSIA because they have expired. 8 CFR 204.10.

F. Revoking Grants of Naturalization, RIN 1615–AA30

This rule amended the process by which the Service would administratively reopen and revoke a grant of naturalization. This interim rule changed the burden of proof that the Service would use in revocation proceedings and made other changes to the administrative process. 65 FR 17127 (March 31, 2000).

The Secretary has sole authority to grant a person naturalization as a United States citizen. INA section 310(a), 8 U.S.C. 1421(a). The Act also provides

DHS with the authority ''to correct, reopen, alter, modify, or vacate an order naturalizing [a] person'' as a United States citizen. INA section 340(h), 8 U.S.C. 1451(h). The interim rule was promulgated under this authority.

No public comments were received.

This rule removes regulations that were invalidated on July 20, 2000, by the Ninth Circuit Court of Appeals in a nationwide class action lawsuit. *Gorbach* v. *Reno,* 219 F.3d 1087 (9th Cir. 2000) (en banc). That decision held that the Attorney General lacked the statutory authority to promulgate regulations permitting revocation of citizenship of a naturalized citizen through administrative proceedings. *Id. See also* INA sections 310(a), 340(a), (h), 8 U.S.C. 1421(a), 1451(a), (h). The government did not seek Supreme Court review of that decision, thus USCIS is precluded from using those regulations to revoke naturalization. This rule removes the applicable regulations from 8 CFR 340.10.

VI. Discussion of Comments Received in Response to the June 5, 2009, Interim Rule

On June 5, 2009, DHS published an interim rule in the **Federal Register** ''Removing References to Filing Locations and Obsolete References to Legacy Immigration and Naturalization Service; Adding a Provision To Facilitate the Expansion of the Use of Approved Electronic Equivalents of Paper Forms.'' The rule revised many sections of the 8 CFR, many of which are further revised by this rulemaking.

USCIS received only three comments in response to this rulemaking: one from an immigration practitioner, one from an organization of immigration practitioners, and one from an organization representing businesses which frequently rely on international personnel. A discussion of those comments follows.

One commenter noted that the revision to 8 CFR 214.2(l)(2)(i) apparently unintentionally added to the petitioner's burden by requiring that ''the petitioner shall advise * * * whether *a previous petition has been filed* for the same beneficiary * * *'' whereas the original language stated ''the petitioner shall advise * * * whether *it has filed* a petition for the same beneficiary.'' (Emphasis in original). Although this change was inadvertent and not intended to affect any right, the requirement as revised is entirely consistent with both the INA and the current form instructions. The Act limits the amount of time an alien can spend in the United States as an L–1 or H nonimmigrant (not just for a particular petitioner). *See* section 214(c)(2)((D) of the Act, 8 U.S.C. 1184.2(c)(2)(D). The current Form I–129, Supplement L, question 2 requires submission of copies of USCIS-issued documents relating to periods of H or L stay in the United States during the past seven years. It does not limit such submission to documents relating to the current petitioner. Accordingly, USCIS has not adopted the commenter's suggestion that we revert to the prior language.

The commenter made an additional comment regarding the omission of the word ''of'' from the first sentence in 8 CFR 214.2(l)(2)(ii). USCIS appreciates notification by the commenter of the typographical error which will be corrected in this rule. As previously discussed, 8 CFR part 214 will be reorganized in a future transformation-related rulemaking.

Another commenter suggests that USCIS avail itself of the opportunity to revise 8 CFR 212.7 to reflect the fact that K nonimmigrants may apply for a waiver only pursuant to section 212(d)(3) of the Act and that such persons may only apply for a waiver under section 212(h) or 212(i) of the Act at the time of application for adjustment of status. The commenter noted that both the regulation and form instruction for Form I–601, Application for Waiver of Ground of Inadmissibility, are incorrect. USCIS appreciates the comment and the commenter's suggestions may be addressed in a future rulemaking or with a form revision. However, the interim rule was limited to removing filing jurisdiction limitations from regulations. Thus the commenter's suggestion exceeds the scope of the changes made and will not be adopted in this rulemaking.

The final commenter addressed the removal of filing jurisdictions from regulations. The commenter expresses its concern that an accelerated process for changing filing locations could have an adverse impact on the public. The commenter was especially concerned about situations involving statutory or regulatory deadlines for filing where the public may have insufficient notice of the proposed change.

The same commenter, while supportive of USCIS' transformation efforts, offered several suggestions to minimize the potential adverse impacts of this rulemaking. The commenter recommended that, at each place the regulations are amended, to direct the public to ''instructions on the form,'' and that USCIS add a phrase to explain that form instructions will be available on line, that any change to the filing instructions will be provided to the public by formal announcement no less than 30 days in advance of the change, and that when a filing jurisdiction changes, USCIS offices formerly designated to receive such filings continue to accept them for at least 180 days after the effective date of the change.

USCIS understands and appreciates the commenter's concerns. We realize that numerous changes in filing instructions and locations may be confusing. It is our intent to reduce filing locations and complexity, and change them less often, not more. In the case of time-sensitive benefit requests, USCIS will keep such factors in mind when making changes and make adjustments to the change schedule so as to not result in missing a deadline because of the filing location change.

The commenter suggested that the preamble language describing the USCIS National Customer Service Center (NCSC) as a source of information regarding filing locations be removed because its membership has not gotten consistently reliable information from this source. The commenter recommended that USCIS customer service representatives be directed to consult the online form instructions before offering any advice to applicants regarding filing location. USCIS regrets any incorrect information that may be provided and always endeavors to provide the NCSC staff with information regarding filing requirements so questions may be answered. USCIS encourages the public to report possible erroneous or outdated messages so that they may be corrected. No change to the interim rule is made as a result of this comment.

The commenter also suggests that information about changes to form and filing instructions be posted in a consistent and prominent location on USCIS Web site along with a chronological list of all changes to form instructions, including filing location changes. As the interim rule stated, filing locations are provided on USCIS form instructions. The current official version of the form and instructions are the versions on the USCIS Internet Web site for forms, *http://www.uscis.gov/forms.* Also, the USCIS home page will alert the public and stakeholders of any recent or planned filing location changes. In addition, USCIS will continue to publicize filing location changes with press releases. Additional suggestions for improving the Web site and information sharing are welcome.

The commenter also suggested that regulations mandate a 180-day transition period for filing location changes, during which USCIS would

accept such benefit requests at both the prior and new filing location. USCIS works to ensure that benefit requests are not rejected as a result of abrupt changes in filing location. USCIS announces filing changes well in advance and generally includes a transition period considering all factors and circumstances surrounding the change. However, forwarding mail from offices that formerly handled requests to the new office is very expensive and an inefficient use of USCIS fee revenue. USCIS will provide as much lead time as possible before making filing changes and will implement the changes in such a way so as to minimize the impacts of the change. However, a 180 day implementation period for each filing change is impracticable and will not be adopted.

The commenter also expressed a concern that USCIS intends to stop producing and distributing a paper version of its form instructions. As transformation continues, the filing of paper forms is expected to decrease substantially as USCIS expects electronic means to become the preferred filing method. As was the goal of GPEA and has been the experience of other Federal agencies that provide electronic filing options, in the future certain forms or requests may lend themselves to a totally electronic submission with no paper option. Nevertheless, at this time, as stated elsewhere in this preamble, USCIS will continue to provide paper versions of most forms and instructions as well as portable document format or other electronic versions through its Internet Web site. Further, the electronic versions of form instructions will parallel the written form instructions precisely, so the method chosen should cause no inconsistencies in benefit eligibility or adjudication.

The commenter also suggested that USCIS provide access to earlier versions of forms and instructions. Following a form's revisions, USCIS often provides that previous version of the form are acceptable until further notice or for a prescribed period. However, when changes are made to a form because eligibility criteria are changed by law or regulation, the previous version of a form may be outdated, incomplete, and unacceptable. Further, for ease of administration and consistency in adjudication, USCIS prefers to receive the most current version so the employee reviewing the form knows where to look for the required data elements. Thus USCIS sees little value in providing previous versions of forms as a general policy or requirement, and the commenter's suggestion has not been adopted.

The commenter also suggested that any elimination of geographically-based jurisdiction should be coupled with a new model for determining such jurisdiction. The interim rule gave USCIS greater flexibility to alter filing locations, but it does not change how internal responsibilities for adjudicating benefit requests are prescribed. For many benefit requests, notwithstanding their removal from the CFR, filing locations will seldom or not change. USCIS will continue to make changes in filing, appearance or jurisdictional requirements with the convenience of and service to applicants, petitioners, and beneficiaries as a primary concern. Thus, in response to this comment, methods of determining jurisdiction are not revised in this rule.

VII. Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (APA) requires DHS to provide public notice and seek public comment on substantive regulations. *See* 5 U.S.C. 553. The APA, however, excludes certain types of regulations and permits exceptions for other types of regulations from the public notice and comment requirement. DHS issues this rule without providing the opportunity for prior notice and comment for the reasons described below. DHS nevertheless invites comments on this rule and will consider all timely comments submitted during the public comment period as described in the ''Public Participation'' section.

Removal of form numbers and titles, position titles, and procedural guidance, and reorganization and clarification of 8 CFR. The Administrative Procedure Act (APA) excepts from the prior notice and opportunity for comment requirements ''* * * rules of agency organization, procedure or practice.'' 5 U.S.C. 553(b)(A). This rule removes form numbers and titles, position titles, and procedural guidance, reorganizes and clarifies parts of 8 CFR, and makes changes such as removing Form I–129, district director, instructions for retaining copies of documents, and instructions for forwarding of files. Accordingly, to the extent that this rule adopts rules of agency organization, procedure or practice, those portions of the rule are excepted from the notice-and-comment requirements under 5 U.S.C. 553(b)(A).

Remove and update outdated provisions. This rule removes provisions of 8 CFR where statutory authorization has expired, corrects provisions required by statutory amendments or extensions, removes extraneous or outdated provisions, and corrects erroneous references. For example, this rule removes references to the Irish Peace Process Cultural and Training Program Act because that law was repealed in 2005 and removes nonpreference investor visas and third and sixth preference employment-based visas because authorization for these visas was repealed in 1990. This rule is a ministerial action necessary to conform regulations with law. Therefore, advance public notice and an opportunity for public comment is unnecessary and not in the public interest. *See* 5 U.S.C. 553(b)(3)(B).

B. 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.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. 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, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. 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 Executive Order 12866.

There will be no additional costs incurred by any individual or business as a result of the changes in this rule. The rule will clarify and revise existing regulations and does not alter the regulations in a significant manner. Once transformation is complete, USCIS applicants, petitioners, representatives, and others will realize a significant savings in time and effort when submitting immigration benefit requests, seeking case status information, and communicating with USCIS.

E. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DHS has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting and recordkeeping requirements inherent in a rule. Public Law 104–13, 109 Stat. 163 (May 22, 1995). This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

H. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. When an agency makes changes effective through a final rule for which notice and comment are not necessary, the RFA does not require an agency to prepare a regulatory flexibility analysis. Accordingly, USCIS has not prepared a regulatory flexibility analysis.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 100

Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 207

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 209

Aliens, Immigration, Refugees.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 213a

Administrative practice and procedure, Aliens, Immigrants.

8 CFR Part 223

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 238

Air Carriers, Aliens, Government contracts, Maritime carriers.

8 CFR Part 240

Administrative practice and procedure, Immigration.

8 CFR Part 241

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 244

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 265

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud; Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 287

Immigration, Law enforcement officers.

8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

8 CFR Part 301

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 310

Citizenship and naturalization, Courts.

8 CFR Part 312

Citizenship and naturalization, Education.

8 CFR Part 316

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 319

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 320

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 324

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 325

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 328

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements.

8 CFR Part 329

Citizenship and naturalization, Military personnel, Veterans.

8 CFR Part 330

Reporting and recordkeeping requirements, Seamen.

8 CFR Part 332

Citizenship and naturalization, Education, Reporting and recordkeeping requirements.

8 CFR Part 333

Citizenship and naturalization.

8 CFR Part 334

Administrative practice and procedure, Citizenship and naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Part 335

Administrative practice and procedures, Citizenship and naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Part 336

Administrative practice and procedure, Citizenship and naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Part 337

Citizenship and naturalization, Courts.

8 CFR Part 338

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 339

Citizenship and naturalization, Courts.

8 CFR Part 340

Citizenship and naturalization, Law enforcement.

8 CFR Part 341

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 342

Administrative practice and procedure, Citizenship and naturalization.

8 CFR Part 343

Citizenship and naturalization.

8 CFR Part 343a

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 343b

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 343c

Archives and records, Citizenship and naturalization, Courts.

8 CFR Part 392

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 499

Citizenship and naturalization.

Accordingly, the interim rules published at 68 FR 23010, on April 29, 2003; 64 FR 27660 on May 21, 1999; 66 FR 27445 on May 17, 2001; 69 FR 11287 on March 10, 2004; 70 FR 23775 on May 5, 2005; 70 FR 21129 on April 25, 2005; and 65 FR 17127 on March 31, 2000 are adopted as final without change, and chapter I of title 8 of the Code of Federal Regulations is amended as follows.

■ 1. Part 1 is revised to read as follows:

PART 1—DEFINITIONS

Sec.
1.1 Applicability.
1.2 Definitions.
1.3 Lawfully present aliens for purposes of applying for Social Security benefits.

Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Pub. L. 107–296, 116 Stat. 2135; 6 U.S.C. 1 *et seq.*

§ 1.1 Applicability.

This part further defines some of the terms already described in section 101 and other sections of the Immigration and Nationality Act (66 Stat. 163), as amended, and such other enactments as pertain to immigration and nationality. These terms are used consistently by components within the Department of Homeland Security including U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services.

§ 1.2 Definitions.

As used in this chapter I, the term:

Act or *INA* means the Immigration and Nationality Act, as amended.

Aggravated felony means a crime (or a conspiracy or attempt to commit a crime) described in section 101(a)(43) of the Act. This definition applies to any proceeding, application, custody determination, or adjudication pending on or after September 30, 1996, but shall apply under section 276(b) of the Act only to violations of section 276(a) of the Act occurring on or after that date.

Application means benefit request.

Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section 235(b)(1)(A)(i) of the Act.

Attorney means any person who is eligible to practice law in, and is a member in good standing of the bar of,

the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law.

Benefit request means any application, petition, motion, appeal, or other request relating to an immigration or naturalization benefit, whether such request is filed on a paper form or submitted in an electronic format, provided such request is submitted in a manner prescribed by DHS for such purpose.

Board means the Board of Immigration Appeals within the Executive Office for Immigration Review, Department of Justice, as defined in 8 CFR 1001.1(e).

Case, unless the context otherwise requires, means any proceeding arising under any immigration or naturalization law, Executive Order, or Presidential proclamation, or preparation for or incident to such proceeding, including preliminary steps by any private person or corporation preliminary to the filing of the application or petition by which any proceeding under the jurisdiction of the Service or the Board is initiated.

CBP means U.S. Customs and Border Protection.

Commissioner means the Commissioner of the Immigration and Naturalization Service prior to March 1, 2003. Unless otherwise specified, references after that date mean the Director of U.S. Citizenship and Immigration Services, the Commissioner of U.S. Customs and Border Protection, and the Director of U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears.

Day, when computing the period of time for taking any action provided in this chapter I including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period computed falls on a Saturday, Sunday, or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

Department or DHS, unless otherwise noted, means the Department of Homeland Security.

Director or district director prior to March 1, 2003, means the district director or regional service center director, unless otherwise specified. On or after March 1, 2003, pursuant to delegation from the Secretary of Homeland Security or any successive re-delegation, the terms mean, to the extent that authority has been delegated to such official: asylum office director; director, field operations; district director for interior enforcement; district director for services; field office director; service center director; or special agent in charge. The terms also mean such other official, including an official in an acting capacity, within U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, or other component of the Department of Homeland Security who is delegated the function or authority above for a particular geographic district, region, or area.

EOIR means the Executive Office for Immigration Review within the Department of Justice.

Executed or *execute* means fully completed.

Form when used in connection with a benefit or other request to be filed with DHS to request an immigration benefit, means a device for the collection of information in a standard format that may be submitted in paper format or in an electronic format as prescribed by USCIS on its official Internet Web site. The term Form followed by an immigration form number includes an approved electronic equivalent of such form as may be prescribed by the appropriate component on its official Internet Web site.

Form instructions means instructions on how to complete and where to file a benefit request, supporting evidence or fees, or any other required or preferred document or instrument with a DHS immigration component. Form instructions prescribed by USCIS or other DHS immigration components on their official Internet Web sites will be considered the currently applicable version, notwithstanding paper or other versions that may be in circulation, and may be issued through non-form guidance such as appendices, exhibits, guidebooks, or manuals.

ICE means U.S. Immigration and Customs Enforcement.

Immigration judge means an immigration judge as defined in 8 CFR 1001.1(l).

Immigration officer means the following employees of the Department of Homeland Security, including senior or supervisory officers of such employees, designated as immigration officers authorized to exercise the powers and duties of such officer as specified by the Act and this chapter I: aircraft pilot, airplane pilot, asylum officer, refugee corps officer, Border Patrol agent, contact representative, deportation officer, detention enforcement officer, detention officer, fingerprint specialist, forensic document analyst, general attorney (except with respect to CBP, only to the extent that the attorney is performing any immigration function), helicopter pilot, immigration agent (investigations), immigration enforcement agent, immigration information officer, immigration inspector, immigration officer, immigration services officer, investigator, intelligence agent, intelligence officer, investigative assistant, special agent, other officer or employee of the Department of Homeland Security or of the United States as designated by the Secretary of Homeland Security as provided in 8 CFR 2.1.

Lawfully admitted for permanent residence means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion, deportation, or removal.

Petition. See Benefit request.

Practice means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS.

Preparation, constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed DHS forms, by one whose remuneration, if any, is nominal and who does not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure.

Representation before DHS includes practice and preparation as defined in this section.

Representative refers to a person who is entitled to represent others as provided in 8 CFR 292.1(a)(2) through (6) and 8 CFR 292.1(b).

Respondent means an alien named in a Notice to Appear issued in accordance with section 239(a) of the Act, or in an Order to Show Cause issued in accordance with 8 CFR 242.1 (1997) as it existed prior to April 1, 1997.

Secretary, unless otherwise noted, means the Secretary of Homeland Security.

Service means U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and/or U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears.

Service counsel means any immigration officer assigned to represent the Service in any proceeding before an immigration judge or the Board of Immigration Appeals.

Transition program effective date as used with respect to extending the immigration laws to the Commonwealth of the Northern Mariana Islands means November 28, 2009.

USCIS means U.S. Citizenship and Immigration Services.

§ 1.3 Lawfully present aliens for purposes of applying for Social Security benefits.

(a) *Definition of the term an ''alien who is lawfully present in the United States.''* For the purposes of 8 U.S.C. 1611(b)(2) only, an ''alien who is lawfully present in the United States'' means:

(1) A qualified alien as defined in 8 U.S.C. 1641(b);

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Act for less than 1 year, except:

(i) Aliens paroled for deferred inspection or pending removal proceedings under section 240 of the Act; and

(ii) Aliens paroled into the United States for prosecution pursuant to 8 CFR 212.5(b)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because DHS has decided for humanitarian or other public policy reasons not to initiate removal proceedings or enforce departure:

(i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the Act;

(ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the Act;

(iii) Cuban-Haitian entrants, as defined in section 202(b) of Pub. L. 99–603, as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649, as amended;

(v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) Aliens currently in deferred action status;

(vii) Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status;

(5) Applicants for asylum under section 208(a) of the Act and applicants for withholding of removal under section 241(b)(3) of the Act or under the Convention Against Torture who have been granted employment authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

(b) *Non-issuance of a Notice to Appear and non-enforcement of deportation, exclusion, or removal orders.* An alien may not be deemed to be lawfully present solely on the basis of DHS's decision not to, or failure to:

(1) Issue a Notice to Appear; or

(2) Enforce an outstanding order of deportation, exclusion or removal.

PART 100—STATEMENT OF ORGANIZATION

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

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 100.7 [Removed]

■ 3. Section 100.7 is removed.

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 4. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135; 6 U.S.C. 1 *et seq.;* E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 5. The heading for part 103 is revised as set forth above.

■ 6. In part 103, §§ 103.1 through 103.10 are designated under the following subpart A heading:

Subpart A—Applying for Benefits, Surety Bonds, Fees

§ 103.1 [Removed and Reserved]

■ 7. Section 103.1 is removed and reserved.

■ 8. Section 103.2 is amended by:

■ a. Removing the phrases ''petition or application'' and ''application or petition'' and adding in its place the phrase ''benefit request''; and by removing the phrase ''petitions and applications'' and adding in its place the phrase ''benefit requests'' whenever they appear in the following places:

■ i. Paragraph (a)(2);

■ ii. Paragraph (a)(3);

■ iii. Paragraph (a)(7)(ii);

■ iv. Paragraph (b)(6);

■ v. Paragraph (b)(7);

■ vi. Paragraph (b)(8)(i);

■ vii. Paragraph (b)(8)(ii);

■ viii. Paragraph (b)(8)(iii);

■ ix. Paragraph (b)(9) introductory text;

■ x. Paragraph (b)(9)(ii);

■ xi. Paragraph (b)(10)(i);

■ xii. Paragraph (b)(10)(ii);

■ xiii. Paragraph (b)(11);

■ xiv. Paragraph (b)(12);

■ xv. Paragraph (b)(13)(i);

■ xvi. Paragraph (b)(13)(ii);

■ xvii. Paragraph (b)(14);

■ xviii. Paragraph (b)(15); and

■ xix. Paragraph (b)(18); and

■ b. Revising the section heading;

■ c. Revising paragraph (a)(1);

■ d. Revising the term ''BCIS'' to read ''USCIS'' in paragraph (a)(2) last sentence;

■ e. Revising the term ''§ 1.1(f)'' to read ''§ 1.2'' in paragraph (a)(3) first sentence;

■ f. Revising paragraph (a)(6);

■ g. Revising paragraph (a)(7)(i) and adding paragraph (a)(7)(iii);

■ h. Revising paragraph (b)(1);

■ i. Revising paragraph (b)(4);

■ j. Revising the phrase ''by submitting a properly completed and signed Form G–884 to the adjudicating USCIS office'' to read ''in accordance with instructions provided by USCIS'' in paragraph (b)(5) last sentence;

■ k. Revising the term ''application, petition'' to read ''benefit request'' in paragraph (b)(7) last sentence;

■ l. Revising the term ''in writing'' to read ''communicated by regular or electronic mail'' in paragraph (b)(8)(iv) first sentence;

■ m. Revising the second sentence in paragraph (b)(17)(i);

■ n. Revising paragraph (b)(19); and

■ o. Removing paragraph (e).

The revisions and addition read as follows:

§ 103.2 Submission and adjudication of benefit requests.

(a) *Filing.* (1) *Preparation and submission.* Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission. Each benefit request or other document must be filed with fee(s) as required by regulation. Benefit requests which require a person to submit biometric information must also be filed with the biometric service fee in 8 CFR 103.7(b)(1), for each individual who is required to provide biometrics. Filing fees and biometric service fees are non-refundable and, except as otherwise

provided in this chapter I, must be paid when the benefit request is filed.

* * * * *

(6) *Where to file.* All benefit requests must be filed in accordance with the form instructions.

(7) *Receipt date.* (i) *Benefit requests submitted.* A benefit request which is not signed and submitted with the correct fee(s) will be rejected. A benefit request that is not executed may be rejected. Except as provided in 8 CFR parts 204, 245, or 245a, a benefit request will be considered received by USCIS as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format. The receipt date shall be recorded upon receipt by USCIS.

* * * * *

(iii) *Rejected benefit requests.* A benefit request which is rejected will not retain a filing date. There is no appeal from such rejection.

(b) *Evidence and processing.* (1) *Demonstrating eligibility.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request.

* * * * *

(4) *Supporting documents.* Original or photocopied documents which are required to support any benefit request must be submitted in accordance with the form instructions.

* * * * *

(17) * * *

(i) * * * These records include alien and other files, arrival manifests, arrival records, Department index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1, 1929, Permanent Resident Cards, or other registration receipt forms (provided that such forms were issued or endorsed to show admission for permanent residence), passports, and reentry permits. * * *

* * * * *

(19) *Notification of decision.* The Service will notify applicants, petitioners, and their representatives as defined in 8 CFR part 1 in writing of a decision made on a benefit request. Documents issued based on the approval of a request for benefits will be sent to the applicant or beneficiary.

* * * * *

§ 103.3 [Amended]

■ 9. Section 103.3 is amended by:

■ a. Revising the term ''shall file'' to read ''must submit'' and revising the phrase ''with the office where the unfavorable decision was made'' to read ''as indicated in the applicable form instructions'' in the last sentence in paragraph (a)(2)(i); and

■ b. Revising the term ''§ 103.9(a) of this part'' to read ''8 CFR 103.10(e)'' in paragraph (c) last sentence.

§§ 103.8 through 103.11 [Removed]

■ 10. Sections 103.8 through 103.11 are removed.

§ 103.5a [Redesignated as § 103.8]

■ 11. Section 103.5a is redesignated as § 103.8.

■ 12. Newly redesignated § 103.8 is amended by:

■ a. Revising the section heading;

■ b. Revising the paragraph (a) heading;

■ c. Revising paragraphs (a)(1);

■ d. Removing the ''.'' at the end of paragraph (a)(2)(iv), and adding a ''; or'' in its place; and by

■ e. Adding paragraph (a)(2)(v).

The revisions and addition read as follows:

§ 103.8 Service of decisions and other notices.

* * * * *

(a) *Types of service*—(1) *Routine service.* (i) Routine service consists of mailing the notice by ordinary mail addressed to the affected party and his or her attorney or representative of record at his or her last known address, or

(ii) If so requested by a party, advising the party of such notice by electronic mail and posting the decision to the party's USCIS account.

(2) * * *

(v) If so requested by a party, advising the party by electronic mail and posting the decision to the party's USCIS account.

* * * * *

§ 103.5b [Redesignated as § 103.9]

■ 13. Section 103.5b is redesignated as § 103.9.

■ 14. Section 103.7 is amended by:

■ a. Revising the term ''BCIS'' to read ''USCIS'' wherever that term appears in paragraph (a)(1);

■ b. Adding new paragraphs (b)(1)(i)(CCC), (DDD), and (EEE).

The revisions and addition read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(CCC) *American Competitiveness and Workforce Improvement Act (ACWIA) fee.* $1500 or $750 for filing certain H–1B petitions as described in 8 CFR 214.2(h)(19) and USCIS form instructions.

(DDD) *Fraud detection and prevention fee.* $500 for filing certain H–1B and L petitions, and $150 for H–2B petitions as described in 8 CFR 214.2(h)(19).

(EEE) *Public Law 111–230 fee.* Petitioners who are required to submit the Fraud Detection and Prevention Fee described in paragraph (b)(1)(i)(DDD) of this section are also required to submit an additional $2000 for an H–1B petition or an additional $2250 for an L–1 petition if:

(*1*) The petitioner employs 50 or more persons in the United States;

(*2*) More than 50 percent of those employees are in H–1B or L–1 status; and

(*3*) The petition is filed prior to the expiration of section 402 of Public Law 111–230.

* * * * *

■ 15. Newly redesignated § 103.9 is revised to read as follows:

§ 103.9 Request for further action on an approved benefit request.

(a) *Filing a request.* A person may request further action on an approved benefit request as prescribed by the form instructions. Requests for further action may be submitted with the original benefit request or following the approval of such benefit.

(b) *Processing.* The request will be approved if the requester has demonstrated eligibility for the requested action. There is no appeal from the denial of such request.

§ 103.12 [Removed]

■ 16. Section 103.12 is removed.

§ 103.37 [Redesignated as § 103.10]

■ 17. Section 103.37 is redesignated as § 103.10.

■ 18. Newly redesignated § 103.10 is amended by:

■ a. Redesignating paragraphs (g), (h), and (i) as paragraphs (b), (c), and (d) respectively;

■ b. Revising the term ''paragraph (f) of this section'' to read ''paragraph (c) of this section or 8 CFR 1003.1(h)(2)'' in newly redesignated paragraph (c)(2); and by

■ c. Adding paragraph (e).

The addition reads as follows:

§ 103.10 Precedent decisions.

* * * * *

(e) *Precedent decisions.* Bound volumes of designated precedent

decisions, entitled ''Administrative Decisions under Immigration and Nationality Laws of the United States,'' may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prior to publication in volume form, current precedent decisions are available from the Department of Justice, Executive Office for Immigration Review's Virtual Law Library at: *http://www.justice.gov/eoir/vll/libindex.html*.

■ 19. Section 103.16 is added under an added subpart B heading to read as follows:

Subpart B—Biometric Requirements

§ 103.16 Collection, use and storage of biometric information.

(a) *Use of biometric information.* Any individual may be required to submit biometric information if the regulations or form instructions require such information or if requested in accordance with 8 CFR 103.2(b)(9). DHS may collect and store for present or future use, by electronic or other means, the biometric information submitted by an individual. DHS may use this biometric information to conduct background and security checks, adjudicate immigration and naturalization benefits, and perform other functions related to administering and enforcing the immigration and naturalization laws.

(b) *Individuals residing abroad.* An individual who is required to provide biometric information and who is residing outside of the United States must report to a DHS-designated location to have his or her biometric information collected, whether by electronic or non-electronic means.

■ 20. Section 103.17 is added under subpart B to read as follows:

§ 103.17 Biometric service fee.

(a) *Required fees.* DHS will charge a fee, as prescribed in 8 CFR 103.7(b)(1), for collecting biometric information at a DHS office, other designated collection site overseas, or a registered State or local law enforcement agency designated by a cooperative agreement with DHS to provide biometric collection services, to conduct required law enforcement checks, and to maintain this biometric information for reuse to support other benefit requests. Requests for benefits must be submitted with the biometric service fee for all individuals who are required to submit biometric information and a biometric services fee and who reside in the United States at the time of filing for the benefit.

(b) *Non-payment of biometric service fee.* (1) If a benefit request is received by DHS without the correct biometric service fee, DHS will notify the applicant, petitioner, and, when appropriate, the applicant or petitioner's representative, of the deficiency, and no further action will be taken on the benefit request until payment is received. Failure to submit the correct biometric service fee in response to a notice of deficiency within the time allotted in the notice will result in denial of the benefit request. There is no appeal from the denial of a benefit request for failure to submit the correct biometric service fee. A motion to reopen a benefit request denied for failure to submit the correct biometric service fee will be granted only on proof that:

(i) The correct biometric service fee was submitted at the time of filing the benefit request;

(ii) The correct biometric service fee was submitted in response to the notice of deficiency within the time allotted in the notice; or

(iii) The notice of deficiency was sent to an address other than the address on the benefit request or the notice of representation, or the applicant or petitioner notified DHS, in writing, of a change of address or change of representation subsequent to filing and before the notice of deficiency was sent and the DHS notice of deficiency was not sent to the new address.

(2) If the reason for the deficiency in the biometric service fee is that a check or financial instrument used to pay the biometric service fee is returned as not payable, the remitter must be allowed 14 calendar days to pay the fee and any associated service charges. If the fee and charges are not paid within 14 calendar days, the benefit request will be denied.

§§ 103.20–103.36 [Removed and Reserved]

■ 21. Sections 103.20 through 103.36 are removed.

Subpart C—[Reserved]

■ 22. Add reserved subpart C.

■ 23. Sections 103.38 through 103.41 are designated under the following subpart D heading:

Subpart D—Availability of Records

* * * * *

■ 24. In § 103.41, paragraph (c) is revised to read as follows:

§ 103.41 Genealogy request fees.

* * * * *

(c) *Manner of submission.* The application and fee must be submitted in accordance with form instructions.

■ 25. Section 103.42 is added under subpart D to read as follows:

§ 103.42 Rules relating to the Freedom of Information Act (FOIA) and the Privacy Act.

Immigration-related regulations relating to FOIA and the Privacy Act are located in 6 CFR part 5.

PART 204—IMMIGRANT PETITIONS

■ 26. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

§ 204.3 [Amended]

■ 27. Section 204.3 is amended by:

■ a. Revising the term ''§ 103.2(e) of this chapter'' to read ''8 CFR 103.16'' and the terms ''the Service'' and ''The Service'' to read ''USCIS'' wherever the terms appear in paragraph (c)(3); and by

■ b. Revising the term ''BCIS'' to read ''USCIS'', the term ''Form I–600'' to read ''petition'', and the term ''I–600A'' to read ''advance processing request'' wherever the terms appear in paragraph (h)(3)(ii).

§ 204.4 [Amended]

■ 28. Section 204.4 is amended by:

■ a. Revising the term ''§ 103.2(e) of this chapter to read ''8 CFR 103.16'' in the second sentence in paragraph (d)(1); and by

■ b. Removing the phrase '', Form I–360,'' in the last sentence in paragraph (d)(1).

§ 204.6 [Amended]

■ 29. In § 204.6, paragraph (l) is removed and reserved.

§ 204.10 [Removed and Reserved]

■ 30. Section 204.10 is removed and reserved.

§ 204.302 [Amended]

■ 31. In § 204.302, paragraph (b), first sentence, is amended by revising the term ''8 CFR 1.1(i), (j) and (m),'' to read ''8 CFR 1.2''.

§ 204.310 [Amended]

■ 32. In § 204.310, paragraph (b), first sentence, is amended by revising the term ''8 CFR 103.2(e)'' to read ''8 CFR 103.16''.

PART 207—ADMISSION OF REFUGEES

■ 33. The authority citation for part 207 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

■ 34. Section 207.1 is revised to read as follows:

§ 207.1 Eligibility.

(a) *Filing.* Any alien who believes he or she is a refugee as defined in section 101(a)(42) of the Act, and is included in a refugee group identified in section 207(a) of the Act, may apply for admission to the United States by submitting an application, including biometric information, in accordance with the form instructions, as defined in 8 CFR 1.2.

(b) *Firmly resettled.* Any applicant (other than an applicant for derivative refugee status under 8 CFR 207.7) who has become firmly resettled in a foreign country is not eligible for refugee status under this chapter I. A refugee is considered to be ''firmly resettled'' if he or she has been offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has traveled to and entered that country as a consequence of his or her flight from persecution. Any applicant who claims not to be firmly resettled in a foreign country must establish that the conditions of his or her residence in that country are so restrictive as to deny resettlement. In determining whether or not an applicant is firmly resettled in a foreign country, the officer reviewing the matter shall consider the conditions under which other residents of the country live:

(1) Whether permanent or temporary housing is available to the refugee in the foreign country;

(2) Nature of employment available to the refugee in the foreign country; and

(3) Other benefits offered or denied to the refugee by the foreign country which are available to other residents, such as right to property ownership, travel documentation, education, public welfare, and citizenship.

(c) *Immediate relatives and special immigrants.* Any applicant for refugee status who qualifies as an immediate relative or as a special immigrant shall not be processed as a refugee unless it is in the public interest. The alien shall be advised to obtain an immediate relative or special immigrant visa and shall be provided with the proper petition forms to send to any prospective petitioners. An applicant who may be eligible for classification under sections 203(a) or 203(b) of the Act, and for whom a visa number is now available, shall be advised of such eligibility but is not required to apply.

■ 35. Section 207.2 is revised to read as follows:

§ 207.2 Applicant processing.

(a) *Interview.* Each applicant 14 years old or older shall appear in person before an immigration officer for inquiry under oath to determine his or her eligibility for admission as a refugee.

(b) *Medical examination.* Each applicant shall submit to a medical examination as required by sections 221(d) and 232(b) of the Act.

(c) *Sponsorship.* Each applicant must be sponsored by a responsible person or organization. Transportation for the applicant from his or her present abode to the place of resettlement in the United States must be guaranteed by the sponsor.

■ 36. Section 207.3 is revised to read as follows:

§ 207.3 Waivers of inadmissibility.

(a) *Authority.* Section 207(c)(3) of the Act sets forth grounds of inadmissibility under section 212(a) of the Act which are not applicable and those which may be waived in the case of an otherwise qualified refugee and the conditions under which such waivers may be approved.

(b) *Filing requirements.* An applicant may request a waiver by submitting an application for a waiver in accordance with the form instructions. The burden is on the applicant to show that the waiver should be granted based upon humanitarian grounds, family unity, or the public interest. The applicant shall be notified in writing of the decision, including the reasons for denial if the application is denied. There is no appeal from such decision.

■ 37. Section 207.4 is revised to read as follows:

§ 207.4 Approved application.

Approval of a refugee application by USCIS outside the United States authorizes CBP to admit the applicant conditionally as a refugee upon arrival at the port within four months of the date the refugee application was approved. There is no appeal from a denial of refugee status under this chapter.

■ 38. Section 207.5 is revised to read as follows:

§ 207.5 Waiting lists and priority handling.

Waiting lists are maintained for each designated refugee group of special humanitarian concern. Each applicant whose application is accepted for filing by USCIS shall be registered as of the date of filing. The date of filing is the priority date for purposes of case control. Refugees or groups of refugees may be selected from these lists in a manner that will best support the policies and interests of the United States. The Secretary may adopt appropriate criteria for selecting the refugees and assignment of processing priorities for each designated group based upon such considerations as reuniting families, close association with the United States, compelling humanitarian concerns, and public interest factors.

■ 39. Section 207.7 is amended by:

■ a. Revising the term ''U.S. Attorney General'' to read ''Secretary'' in paragraph (b)(5);

■ b. Revising paragraph (d);

■ c. Removing the last two sentences in paragraph (e); and

■ d. Revising paragraph (f).

The revisions read as follows:

§ 207.7 Derivatives of refugees.

* * * * *

(d) *Filing.* A refugee may request accompanying or following-to-join benefits for his or her spouse and unmarried, minor child(ren) (whether the spouse and children are inside or outside the United States) by filing a petition in accordance with the form instructions. The petition may only be filed by the principal refugee. Family members who derived their refugee status are not eligible to request derivative benefits on behalf of their spouses and child(ren). A petition must be filed for each qualifying family member within 2 years of the refugee's admission to the United States, unless USCIS determines that the filing period should be extended for humanitarian reasons. There is no time limit imposed on a family member's travel to the United States once the petition has been approved, provided that the relationship of spouse or child continues to exist and approval of the petition has not been subsequently revoked. There is no fee for this petition.

* * * * *

(f) *Approvals.* (1) *Spouse or child in the United States.* When a spouse or child of a refugee is in the United States and the petition is approved, USCIS will notify the refugee of such approval. Employment will be authorized incident to status.

(2) *Spouse or child outside the United States.* When a spouse or child of a refugee is outside the United States and the petition is approved, USCIS will notify the refugee of such approval. USCIS will send the approved petition to the Department of State for transmission to the U.S. Embassy or Consulate having jurisdiction over the area in which the refugee's spouse or child is located.

(3) *Benefits.* The approval of the petition shall remain valid for the duration of the relationship to the refugee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the

principal's status has not been revoked. However, the approved petition will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of a refugee. For a derivative inside or arriving in the United States, USCIS will issue a document reflecting the derivative's current status as a refugee to demonstrate employment authorization, or the derivative may apply, under 8 CFR 274a.12(a), for evidence of employment authorization.

* * * * *

■ 40. Section 207.9 is revised to read as follows:

§ 207.9 Termination of refugee status.

The refugee status of any alien (and of the spouse or child of the alien) admitted to the United States under section 207 of the Act will be terminated by USCIS if the alien was not a refugee within the meaning of section 101(a)(42) of the Act at the time of admission. USCIS will notify the alien in writing of its intent to terminate the alien's refugee status. The alien will have 30 days from the date notice is served upon him or her in accordance with 8 CFR 103.8, to present written or oral evidence to show why the alien's refugee status should not be terminated. There is no appeal under this chapter I from the termination of refugee status by USCIS. Upon termination of refugee status, USCIS will process the alien under sections 235, 240, and 241 of the Act.

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 41. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

§ 208.1 [Amended]

■ 42. Section 208.1 is amended by:
■ a. Revising in the last sentence of paragraph (a)(1) the term ''8 CFR parts 3 and 103, where applicable'' to read ''8 CFR parts 103 and 1003, as applicable''; and
■ b. Revising in paragraph (b) the term ''The Director of International Affairs'' to read ''The Associate Director of USCIS Refugee, Asylum, and International Operations (RAIO)''.

§ 208.2 [Amended]

■ 43. Section 208.2 is amended in paragraph (a) by revising the paragraph heading to read: ''Refugee, Asylum, and International Operations (RAIO)'' and by revising the terms ''the Office of International Affairs'' and ''The Office of International Affairs'' to read: ''RAIO'' wherever they appear.

§ 208.5 [Amended]

■ 44. Section 208.5 is amended by:
■ a. Removing the phrase '', pursuant to § 208.4(b),'' in the last sentence of paragraph (b)(1)(ii);
■ b. Revising the phrase ''The DHS office'' to read ''DHS'' and by revising the phrase ''the DHS office'' to read ''DHS'' in paragraph (b)(1)(ii); and
■ c. Revising the term ''Attorney General'' to read ''Secretary'' in paragraph (b)(2).

■ 45. Section 208.7 is amended by:
■ a. Revising the phrase ''submit a Form I–765, Application for Employment Authorization'' to read ''request employment authorization'' in paragraph (a)(1), first sentence;
■ b. Revising the term ''Form I–765'' to read ''employment authorization request'' in paragraph (a)(1), last sentence;
■ c. Revising the phrase ''the Service'' to read ''USCIS'' in paragraph (a)(2), first sentence;
■ d. Revising the phrase ''the Commissioner'' to read ''USCIS'' in paragraph (b), introductory text; and
■ e. Revising paragraph (c), introductory text.

The revision reads as follows:

§ 208.7 Employment authorization.

* * * * *

(c) *Supporting evidence for renewal of employment authorization.* In order for employment authorization to be renewed under this section, the alien must request employment authorization in accordance with the form instructions. USCIS may require that an alien establish that he or she has continued to pursue an asylum application before an immigration judge or sought administrative or judicial review. For purposes of employment authorization, pursuit of an asylum application is established by presenting one of the following, depending on the stage of the alien's immigration proceedings:

* * * * *

§ 208.9 [Amended]

■ 46. In § 208.9, paragraph (b) is amended by removing the phrase ''electronically or through any other means designated by the Attorney General''.

§ 208.10 [Amended]

■ 47. Section 208.10 is amended by revising the term ''the Office of International Affairs'' to read ''USCIS'' in the third sentence.

§ 208.12 [Amended]

■ 48. In § 208.12, paragraph (a) is amended by revising the term ''the Office of International Affairs, other Service offices,'' to read ''other USCIS offices''.

§ 208.14 [Amended]

■ 49. In § 208.14, paragraph (b) is amended by revising the term ''Office of International Affairs'' to read ''RAIO''.
■ 50. Section 208.21 is amended by revising paragraphs (c) and (d) to read as follows:

§ 208.21 Admission of the asylee's spouse and children.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States, but was not included in the asylee's application, the asylee may request accompanying or following-to-join benefits for his or her spouse or child, regardless of the status of that spouse or child in the United States, in accordance with the form instructions. The petition must be filed by the asylee for each qualifying family member within 2 years of the date in which he or she was granted asylum status, unless it is determined by USCIS that this period should be extended for humanitarian reasons. Upon approval of the petition, USCIS will notify the asylee of such approval. Employment will be authorized incident to status. To demonstrate employment authorization, USCIS will issue a document reflecting the derivative's current status as an asylee, or the derivative may apply, under 8 CFR 274a.12(a), for evidence of employment authorization. The approval of the derivative benefits petition shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved petition will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the asylee may request accompanying or following-to-join benefits for his or her spouse or child(ren) by filing a separate petition for each qualifying family member in accordance with the form instructions. A petition for each qualifying family member must be filed within 2 years of the date in which the asylee was granted asylum, unless USCIS determines that the filing period should be extended for

humanitarian reasons. When a petition is approved, USCIS will notify the asylee of such approval. USCIS will also send the approved petition to the Department of State for transmission to the U.S. Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located. The approval of the petition shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved petition will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

* * * * *

■ 51. Section 208.24 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (b) introductory text; and by

■ c. Revising the term ''§ 3.2 or § 3.23 of this chapter'' to read 8 CFR 1003.2 and 8 CFR 1003.23'' and by revising the term ''the Service'' to read ''USCIS'', wherever the term appears in paragraph (f).

The revisions read as follows:

§ 208.24 Termination of asylum or withholding of removal or deportation.

(a) *Termination of asylum by USCIS.* Except as provided in paragraph (e) of this section, an asylum officer may terminate a grant of asylum made under the jurisdiction of USCIS if, following an interview, the asylum officer determines that:

* * * * *

(b) *Termination of withholding of deportation or removal by USCIS.* Except as provided in paragraph (e) of this section, an asylum officer may terminate a grant of withholding of deportation or removal made under the jurisdiction of USCIS if the asylum officer determines, following an interview, that:

* * * * *

■ 52. Section 208.30 is amended by revising paragraph (d)(3) to read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

* * * * *

(d) * * *

(3) The alien may be required to register his or her identity.

* * * * *

§ 208.31 [Amended]

■ 53. In § 208.31, paragraph (a) is amended by revising the term ''The Service'' to read ''USCIS'' in the last sentence.

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

■ 54. The authority citation for part 209 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 55. Section 209.1 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Revising paragraph (b);

■ c. Removing from paragraph (c) last sentence the phrase '', by submitting with the adjustment of status application a vaccination supplement, completed by a designated civil surgeon in the United States'';

■ d. Revising paragraphs (d) and (e); and

■ e. Adding paragraph (f).

The revisions read as follows:

§ 209.1 Adjustment of status of refugees.

* * * * *

(a) *Eligibility.* (1) Every alien in the United States who is classified as a refugee under 8 CFR part 207, whose status has not been terminated, is required to apply to USCIS one year after entry in order for USCIS to determine his or her admissibility under section 212 of the Act, without regard to paragraphs (4), (5), and (7)(A) of section 212(a) of the Act.

* * * * *

(b) *Application.* Upon admission to the United States, every refugee entrant will be notified of the requirement to submit an application for permanent residence one year after entry. An application for the benefits of section 209(a) of the Act must be submitted along with the biometrics required by 8 CFR 103.16 and in accordance with the applicable form instructions.

* * * * *

(d) *Interview.* USCIS will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status under this part.

(e) *Decision.* USCIS will notify the applicant in writing of the decision on his or her application. There is no appeal of a denial, but USCIS will notify an applicant of the right to renew the request for permanent residence in removal proceedings under section 240 of the Act. If the applicant is found to be admissible for permanent residence under section 209(a) of the Act, USCIS will approve the application, admit the applicant for lawful permanent residence as of the date of the alien's arrival in the United States, and issue proof of such status.

(f) *Inadmissible Alien.* An applicant who is inadmissible to the United States as described in 8 CFR 209.1(a)(1), may, under section 209(c) of the Act, have the grounds of inadmissibility waived by USCIS except for those grounds under sections 212(a)(2)(C) and 212(a)(3)(A), (B), (C), or (E) of the Act for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest. An application for the waiver may be requested with the application for adjustment, in accordance with the form instructions.

■ 56. Section 209.2 is amended by:

■ a. Revising the term ''the director'' to read ''USCIS'' whenever that term appears in paragraph (a)(2);

■ b. Removing the undesignated paragraph at the end of paragraph (a)(1);

■ c. Removing the second, third, and last sentences in paragraph (a)(2); and

■ d. Revising paragraphs (b) through (f).

The revisions read as follows:

§ 209.2 Adjustment of status of aliens granted asylum.

* * * * *

(b) *Inadmissible Alien.* An applicant who is not admissible to the United States as described in 8 CFR 209.2(a)(1)(v), may, under section 209(c) of the Act, have the grounds of inadmissibility waived by USCIS except for those grounds under sections 212(a)(2)(C) and 212(a)(3)(A), (B), (C), or (E) of the Act for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest. An application for the waiver may be requested with the application for adjustment, in accordance with the form instructions. An applicant for adjustment under this part who has had the status of an exchange alien nonimmigrant under section 101(a)(15)(J) of the Act, and who is subject to the foreign resident requirement of section 212(e) of the Act, shall be eligible for adjustment without regard to the foreign residence requirement if otherwise eligible for adjustment.

(c) *Application.* An application for the benefits of section 209(b) of the Act may be filed in accordance with the form instructions. If an alien has been placed in removal, deportation, or exclusion proceedings, the application can be filed and considered only in proceedings under section 240 of the Act.

(d) *Medical examination.* For an alien seeking adjustment of status under section 209(b) of the Act, the alien shall

submit a medical examination to determine whether any grounds of inadmissibility described under section 212(a)(1)(A) of the Act apply. The asylee is also required to establish compliance with the vaccination requirements described under section 212(a)(1)(A)(ii) of the Act.

(e) *Interview.* USCIS will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status under this part.

(f) *Decision.* USCIS will notify the applicant in writing of the decision on his or her application. There is no appeal of a denial, but USCIS will notify an applicant of the right to renew the request in removal proceedings under section 240 of the Act. If the application is approved, USCIS will record the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application, but not earlier than the date of the approval for asylum in the case of an applicant approved under paragraph (a)(2) of this section.

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

■ 57. The authority citation for part 211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

■ 58. Section 211.1 is amended by:
■ a. Revising paragraph (b)(3); and
■ b. Removing paragraph (d).

The revision reads as follows:

§ 211.1 Visas.

(b) * * *

(3) If an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad believes that good cause exists for his or her failure to present an unexpired immigrant visa, permanent resident card, or reentry permit, the alien may file an application for a waiver of this requirement with the DHS officer with jurisdiction over the port of entry where the alien arrives. To apply for this waiver, the alien must file the designated form with the fee prescribed in 8 CFR 103.7(b)(1). If the alien's permanent resident card was lost or stolen and the alien has been absent for less than one year, rather than the waiver application the alien must apply for a replacement card as described in 8 CFR 264.5. In the exercise of discretion, the DHS officer who has jurisdiction over the port of entry where the alien arrives may waive the alien's lack of an immigrant visa, permanent resident card, or reentry permit and admit the alien as a returning resident if DHS is satisfied that the alien has established good cause for the alien's failure to present an immigrant visa, permanent resident card, or reentry permit. Filing a request to replace a lost or stolen card will serve as both application for replacement and as application for waiver of passport and visa, without the obligation to file a separate waiver application.

* * * * *

§ 211.2 [Amended]

■ 59. In § 211.2, paragraph (b) is amended in the second sentence by revising the phrase ''file Form I–193, Application for Waiver of Passport and/or Visa'', to read ''apply on the form specified by USCIS''.

■ 60. Section 211.3 is amended by:
■ a. Revising the section heading; and
■ b. Revising the term ''Form I–551'' to read ''a permanent resident card'' whenever the term appears in the first sentence.

The revision reads as follows:

§ 211.3 Expiration of immigrant visa or other travel document.

* * * * *

§ 211.5 [Amended]

■ 61. Section 211.5 is amended by:
■ a. Revising the phrase ''Form I–551 or I–688 shall become'' to read ''the alien's permanent resident card becomes'' in the last sentence in paragraph (b); and
■ b. Revising the term ''on Form I–90'' to read ''in accordance with 8 CFR 264.5'' in the last sentence of paragraph (c).

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 62. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255; 8 U.S.C. 1185 note (Pub. L. 108–458, § 7209, 118 Stat. 3638; Public Law 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

§ 212.1 [Amended]

■ 63. In § 212.1, paragraph (n) is removed and reserved.

§ 212.2 [Amended]

■ 64. Section 212.2 is amended by revising the term ''the Form I–212'' or ''Form I–212'' to read ''the application'' wherever it appears in the following places:
■ a. Paragraph (b)(1);
■ b. Paragraph (b)(2);
■ c. Paragraph (e), in the last sentence;
■ d. Paragraph (f);
■ e. Paragraph (i)(1) introductory text; and
■ f. Paragraph (i)(2).

■ 65. Section 212.2 is further amended by:
■ a. Revising the term ''sections 212(a)(17) and 212(d)(3)(A) of the Act and § 212.4 of this part'' to read ''sections 212(a)(9)(A) and 212(d)(3)(A) of the Act and 8 CFR 212.4'' in the second sentence of paragraph (b)(1);
■ b. Revising the phrase ''Form I–212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal,'' to read ''an application on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1), in accordance with the form instructions,'' in the last sentence of paragraph (b)(1);
■ c. Revising the phrase ''an application on Form I–212'' to read ''the application on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1), in accordance with the form instructions'' in paragraph (c)(1)(ii);
■ d. Revising the phrase ''the Form I–212 to the Service office with jurisdiction over the area within which the consular officer is located'' to read ''the application to the designated USCIS office'' in paragraph (c)(2);
■ e. Revising the phrase ''Form I–212'' to read ''the waiver request on the form designated by USCIS'' in the first sentence in paragraph (d);
■ f. Revising the phrase ''Form I–601, Application for Waiver of Grounds of Excludability, must be filed simultaneously with the Form I–212'' to read ''he or she must file both waiver requests simultaneously on the forms designated by USCIS with the fees prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions'' in the last sentence in paragraph (d).
■ g. Revising the phrase ''Form I–212, Application for Permission to Reapply'' to read ''the application on the form designated by USCIS'' in the second sentence in paragraph (e);
■ h. Revising the phrase ''file Form I–212'' to read ''apply on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions'' in the first sentence in paragraph (g)(1) introductory text;
■ i. Removing the last sentence in paragraph (g)(1) introductory text;
■ j. Removing paragraphs (g)(1)(i) and (ii);
■ k. Revising the term ''8 CFR 245.15(t)(2)'' to read ''8 CFR 245.15(t)(2) or 8 CFR 245.13(k)(2)'' in the first sentence of paragraph (g)(2);

■ l. Revising the phrase ''Form I–212 or Form I–601 concurrently with the Form I–131, Application for Travel Document'' to read ''waiver form concurrently with the parole request'' in the first sentence in paragraph (g)(2);
■ m. Removing the last sentence in paragraph (g)(2); and by
■ n. Revising the phrase ''section 212(a)(16) or (17) of the Act'' to read ''section 212(a)(9)(A) of the Act'' in the second sentence of paragraph (j).

§ 212.3 [Amended]

■ 66. In § 212.3, paragraph (a) is amended by revising the phrase ''Form I–191, Application for Advance Permission to Return to Unrelinquished Domicile'' to read ''the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions''.

§ 212.4 [Amended]

■ 67. Section 212.4 is amended by:
■ a. Revising the term ''Form I–192 to the district director in charge of the applicant's intended port of entry prior to the applicant's arrival in the United States'', to read ''the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1), and in accordance with the form instructions'' in the first sentence in paragraph (b);
■ b. Removing the term ''of Form I–854, Inter-Agency Alien Witness and Informant Record,'' in the first sentence of paragraph (j)(1); and
■ c. Revising the phrase ''the Commissioner shall'' to read ''USCIS will'' in the first sentence in paragraph (j)(1);
■ d. Revising the phrase ''The Commissioner'' or ''the Commissioner'' to read ''USCIS'' wherever the term appears in the second and third sentences in paragraph (j)(1); and
■ e. Revising the phrase ''the Commissioner'' to read ''USCIS'' in the second sentence in paragraph (j)(2).

§ 212.5 [Amended]

■ 68. In § 212.5, paragraph (f) is amended by revising the term ''Form I–512'' to read ''an appropriate document authorizing travel''.

■ 69. Section 212.7 is amended by:
■ a. Revising the section heading;
■ b. Revising the paragraph (a)(1);
■ c. Revising paragraph (a)(3);
■ d. Revising in paragraph (a)(4), fourth sentence, the phrase ''deportable in a deportation proceeding'' to read ''deportable in deportation proceedings or removable in removal proceedings'';
■ e. Revising the paragraph (b)(1);
■ f. Removing paragraph (b)(3);
■ g. Revising in the first sentence in paragraph (b)(4)(i) the phrase ''section 212(a) (1) or (3) (because of mental retardation or because of a past history of mental illness)'' to read ''section 212(a)(1)(A)(iii) of the Act'' and the phrase ''an executed Form I–601 to the consular or Service office'' to read ''a waiver request'';
■ h. Removing the last sentence in paragraph (b)(4)(i);
■ i. Redesignating paragraphs (b)(4) and (5) as paragraphs (b)(2) and (3), respectively;
■ j. Revising the term ''Form I–612'' to read ''the form designated by USCIS'' in paragraph (c)(5);
■ k. Revising the term ''the Service'' to read ''USCIS'' in the last sentence in paragraph (c)(9)(vi) introductory text;
■ l. Removing the phrase ''with the Service'' in the first sentence in paragraph (c)(9)(vi)(B); and
■ m. Revising the term ''Form I–797 (and/or I–797A and I–797B)'' to read ''the USCIS approval notice'' in paragraph (c)(9)(vi)(B)(*1*).

The revisions read as follows:

§ 212.7 Waiver of certain grounds of inadmissibility.

(a) *Filing and adjudication of waivers under sections 212(g), (h), or (i) of the Act.* (1) *Application procedures.* Any alien who is inadmissible under sections 212(g), (h), or (i) of the Act who is eligible for a waiver of such inadmissibility may file on the form designated by USCIS, with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions. When filed at the consular section of an embassy or consulate, the Department of State will forward the application to USCIS for a decision after the consular official concludes that the alien is otherwise admissible.

* * * * *

(3) *Decision.* USCIS will provide a written decision and, if denied, advise the applicant of appeal procedures in accordance with 8 CFR 103.3.

* * * * *

(b) *Section 212(g) waivers for certain medical conditions.* (1) *Application.* Any alien who is inadmissible under section 212(a)(1)(A)(i), (ii), or (iii) of the Act and who is eligible for a waiver under section 212(g) of the Act may file an application as described in paragraph (a)(1) of this section. The family member specified in section 212(g) of the Act may file the waiver application for the applicant if the applicant is incompetent to file the waiver personally.

* * * * *

§ 212.8 [Removed and Reserved]

■ 70. Section 212.8 is removed and reserved.

§ 212.9 [Removed and Reserved]

■ 71. Section 212.9 is removed and reserved.

■ 72. Section 212.10 is revised to read as follows:

§ 212.10 Section 212(k) waiver.

Any applicant for admission who is in possession of an immigrant visa, and who is inadmissible under section 212(a)(5)(A) or 212(a)(7)(A)(i) of the Act, may apply at the port of entry for a waiver under section 212(k) of the Act. If the application for waiver is denied, the application may be renewed in removal proceedings before an immigration judge as provided in 8 CFR part 1240.

§ 212.11 [Removed and Reserved]

■ 73. Section 212.11 is removed and reserved.

§ 212.14 [Amended]

■ 74. Section 212.14 is amended by:
■ a. Revising the phrase ''a completed Form I–854, Inter-Agency Alien Witness and Informant Record,'' to read ''an application for S nonimmigrant status on the form designated for such purposes'' in paragraph (a)(1)(i);
■ b. Revising the phrase ''a completed Form I–854'' to read ''the completed application'' in the first sentence of paragraph (a)(2)(iii);
■ c. Revising the phrase ''Form I–854 requesting'' to read ''completed application for'' in the second sentence of paragraph (a)(2)(iii); and
■ d. Revising the phrase ''a Form I–854'' to read ''the application'' in paragraph (a)(2)(iii), last sentence.

§ 212.15 [Amended]

■ 75. Section 212.15 is amended by:
■ a. Revising the phrase ''shall submit Form I–905, Application for Authorization to Issue Certification for Health Care Workers'' to read ''must apply on the form designated by USCIS in accordance with the form instructions'' in the first sentence of paragraph (j)(1) introductory text;
■ b. Revising the phrase ''As required on Form I–905, the'' to read ''The'' in the last sentence of paragraph (j)(1), introductory text;
■ c. Revising the term ''shall submit Form I–905'' to read ''must apply'' in the first sentence of paragraph (j)(2)(i);
■ d. Revising the phrase ''shall submit Form I–905, Application for Authorization to Issue Certification for Health Care Workers with the appropriate fee contained in 8 CFR 103.7(b)(1)'' to read ''must apply on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in

accordance with the form instructions'' in the first sentence in paragraph (j)(2)(ii);

■ e. Revising the phrase ''After receipt of Form I–905, USCIS shall, in all cases,'' to read ''USCIS will'' in paragraph (j)(3)(i);

■ f. Removing the phrase ''to the Associate Commissioner for Examinations'' from paragraph (j)(3)(iii);

■ g. Revising the phrase ''a Form I–905 requesting,'' to read ''a request for'' in the second sentence of paragraph (l); and

■ h. Revising the term ''Form I–905'' to read ''the request'' in the second sentence of paragraph (m)(2) introductory text.

§ 212.16 [Amended]

■ 76. Section 212.16 is amended by

■ a. Revising the term ''Form I–192'' to read ''the request on the form designated by USCIS'', by revising the term ''the Service'' to read ''USCIS'', and by revising the phrase ''completed Form I–914 application package'' to read ''application'' in paragraph (a);

■ b. Revising the terms ''the Commissioner'', ''The Service'', and ''the Service'' to read ''USCIS'' wherever those terms appear in paragraph (b); and by

■ c. Revising the term ''The Commissioner'' to read ''USCIS'' in paragraph (d).

■ 77. Section 212.17 is amended by:

■ a. Revising paragraph (a); and by

■ b. Revising the term ''Form I–192'' to read ''the waiver'' wherever the term appears in paragraph (b).

The revision reads as follows:

§ 212.17 Applications for the exercise of discretion relating to U nonimmigrant status.

(a) *Filing the waiver application.* An alien applying for a waiver of inadmissibility under section 212(d)(3)(B) or (d)(14) of the Act (waivers of inadmissibility), 8 U.S.C. 1182(d)(3)(B) or (d)(14), in connection with a petition for U nonimmigrant status being filed pursuant to 8 CFR 214.14, must submit the waiver request and the petition for U nonimmigrant status on the forms designated by USCIS in accordance with the form instructions. An alien in U nonimmigrant status who is seeking a waiver of section 212(a)(9)(B) of the Act, 8 U.S.C. 1182(a)(9)(B) (unlawful presence ground of inadmissibility triggered by departure from the United States), must file the waiver request prior to his or her application for reentry to the United States in accordance with the form instructions.

* * * * *

PART 213A—AFFIDAVITS OF SUPPORT ON BEHALF OF ALIENS

■ 78. The authority citation for part 213a continues to read as follows:

Authority: 8 U.S.C. 1183a; 8 CFR part 2.

§ 213a.1 [Amended]

■ 79. Section 213a.1 is amended by:

■ a. Revising in the definition of *household income* the phrase ''signed a U.S. Citizenship and Immigration Services (USCIS) Form I–864A, Affidavit of Support Contract Between Sponsor and Household Member'' to read ''signed the form designated by USCIS for this purpose'';

■ b. Revising in the definition of *household size,* in the second sentence in paragraph (1), the term ''Form I–864'' to read ''affidavit of support'', wherever the term appears;

■ c. Revising in the definition of *joint sponsor* the term ''a Form I–864'' to read ''an affidavit of support'';

■ d. Revising in the definition of *sponsor* the term ''a Form I–864'' to read ''an affidavit of support''; and

■ e. Revising in the definition of *substitute sponsor* the term ''a Form I–864'' to read ''the affidavit of support'' and the term ''the Form I–130 or I–129F'' to read ''a relative or fiancé(e) petition''.

■ 80–82. Section 213a.2 is amended by:

■ a. Revising paragraphs (a)(1)(i) through (a)(1)(v)(A);

■ b. Revising the phrase ''Form I–864 or Form I–864A'' to read ''affidavit of support or required affidavit of support attachment form'' in the first sentence of paragraph (a)(1)(v)(B);

■ c. Revising the phrase ''Form I–864 and any Form I–864A'' to read ''affidavit of support and any required affidavit of support attachment'' in the last sentence of paragraph (a)(1)(v)(B);

■ d. Revising the phrase ''the Form I–130 or Form I–600 immigrant visa petition (or the Form I–129F petition, for a K nonimmigrant seeking adjustment)'' to read ''relative, orphan or fiancé(e) petition'' in the first sentence of paragraph (b)(1);

■ e. Revising the phrase ''in Form I–864P Poverty Guidelines'' to read ''the Poverty Guidelines'' in paragraph (c)(2)(i)(A);

■ f. Revising the term ''Form I–864'' to read ''affidavit of support'' in paragraph (c)(2)(iii)(A)(*2*);

■ g. Revising paragraph (c)(2)(iii)(C);

■ h. Revising the phrase ''filed USCIS Form I–407, Abandonment of Lawful Permanent Resident Status'' to read ''abandoned permanent resident status, executing the form designated by USCIS for recording such action'' in paragraph (e)(2)(i)(C);

■ i. Revising the phrase ''Form I–864 or Form I–864A'' to read '' affidavit of support and any required attachments'' wherever the term appears in paragraph (f);

■ j. Revising the phrase ''the signed Form(s) I–864 (and any Form(s) I–864A)'' to read ''any relevant affidavit(s) and attachments'' in paragraph (g)(1); and

■ k. Revising paragraphs (g)(2)(i) and (ii).

■ l. Section 213a.2 is further amended by revising the terms ''Form I–864'', ''the Form I–864'', and ''a Form I–864'' to read ''an affidavit of support'' wherever those terms or phrases appear in the following places:

■ i. Paragraph (b), introductory text;

■ ii. Paragraph (b)(1);

■ iii. Paragraph (b)(2);

■ iv. Paragraph (c)(1)(ii)(B);

■ v. Paragraph (c)(2)(i)(A);

■ vi. Paragraph (c)(2)(i)(B);

■ vii. Paragraph (c)(2)(i)(C)(*2*);

■ viii. Paragraph (c)(2)(i)(C)(*4*);

■ ix. Paragraph (c)(2)(i)(D);

■ x. Paragraph (c)(2)(ii)(C);

■ xi. Paragraph (c)(2)(iii)(D);

■ xii. Paragraph (c)(2)(v);

■ xiii. Paragraph (c)(2)(vi);

■ xiv. Paragraph (d);

■ xv. Paragraph (e)(1);

■ xvi. Paragraph (e)(2)(i) introductory text;

■ xvii. Paragraph (e)(2)(i)(D);

■ xviii. Paragraph (e)(2)(ii);

■ xix. Paragraph (e)(3); and

■ xx. Paragraph (f) heading.

■ m. Section 213a.2 is further amended by revising the terms ''Form I–864A'', ''the Form I–864A'', or ''a Form I–864A'' to read ''an affidavit of support attachment'' wherever those terms or phrases appear in the following places:

■ i. Paragraph (c)(2)(i)(C)(*1*);

■ ii. Paragraph (c)(2)(i)(C)(*2*);

■ iii. Paragraph (c)(2)(i)(C)(*3*);

■ iv. Paragraph (c)(2)(i)(C)(*4*);

■ v. Paragraph (c)(2)(i)(C)(*5*);

■ vi. Paragraph (c)(2)(i)(D);

■ vii. Paragraph (c)(2)(iii)(B) introductory text;

■ viii. Paragraph (c)(2)(v);

■ ix. Paragraph (c)(2)(vi);

■ x. Paragraph (e)(1);

■ xi. Paragraph (e)(2)(i) introductory text;

■ xii. Paragraph (e)(2)(i)(D);

■ xiii. Paragraph (e)(2)(ii);

■ xiv. Paragraph (e)(3); and

■ xv. Paragraph (f) heading.

The revisions read as follows:

§ 213a.2 Use of affidavit of support.

(a) *Applicability of section 213a affidavit of support.* (1)(i)(A) In any case specified in paragraph (a)(2) of this section, an intending immigrant is

inadmissible as an alien likely to become a public charge, unless the qualified sponsor specified in paragraph (b) of this section or a substitute sponsor and, if necessary, a joint sponsor, has executed on behalf of the intending immigrant an affidavit of support on the applicable form designated by USCIS in accordance with the requirements of section 213A of the Act and the form instructions. Each reference in this section to the affidavit of support or the form is deemed to be a reference to all such forms designated by USCIS for use by a sponsor for compliance with section 213A of the Act.

(B) If the intending immigrant claims that, under paragraph (a)(2)(ii)(A), (C), or (E) of this section, the intending immigrant is exempt from the requirement to file an affidavit of support, the intending immigrant must include with his or her application for an immigrant visa or adjustment of status an exemption request on the form designated by USCIS for this purpose.

(ii) An affidavit of support is executed when a sponsor signs and submits the appropriate forms in accordance with the form instructions to USCIS or the Department of State, as appropriate.

(iii) A separate affidavit of support is required for each principal beneficiary.

(iv) Each immigrant who will accompany the principal intending immigrant must be included on the affidavit. See paragraph (f) of this section for further information concerning immigrants who intend to accompany or follow the principal intending immigrant to the United States.

(v)(A) Except as provided for under paragraph (a)(1)(v)(B) of this section, the Department of State consular officer, immigration officer, or immigration judge will determine the sufficiency of the affidavit of support based on the sponsor's, substitute sponsor's, or joint sponsor's reasonably expected household income in the year in which the intending immigrant filed the application for an immigrant visa or for adjustment of status, and based on the evidence submitted with the affidavit of support and the Poverty Guidelines in effect when the intending immigrant filed the application for an immigrant visa or adjustment of status.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(C) *Joint sponsor.* A joint sponsor must execute a separate affidavit of support on behalf of the intending immigrant(s) and be willing to accept joint and several liabilities with the sponsor or substitute sponsor. A joint sponsor must meet all the eligibility requirements under paragraph (c)(1) of this section, except that the joint sponsor is not required to file a visa petition on behalf of the intending immigrant. The joint sponsor must demonstrate his or her ability to support the intending immigrant in the manner specified in paragraph (c)(2) of this section. A joint sponsor's household income must meet or exceed the income requirement in paragraph (c)(2)(iii) of this section unless the joint sponsor can demonstrate significant assets as provided in paragraph (c)(2)(iv)(A) of this section. The joint sponsor's household income must equal at least 125 percent of the Poverty Guidelines for the joint sponsor's household size, unless the joint sponsor is on active duty in the Armed Forces and the intending immigrant is the joint sponsor's spouse or child, in which case the joint sponsor's household income is sufficient if it equals at least 100 percent of the Poverty Guidelines for the joint sponsor's household size. An intending immigrant may not have more than one joint sponsor, but, if the joint sponsor's household income is not sufficient to meet the income requirement with respect to the principal intending immigrant, any spouse and all the children who, under section 203(d) of the Act, seek to accompany the principal intending immigrant, then the joint sponsor may specify on the affidavit that it is submitted only on behalf of the principal intending immigrant and those accompanying family members specifically listed on the affidavit. The remaining accompanying family members will then be inadmissible under section 212(a)(4) of the Act unless a second joint sponsor submits an affidavit(s) on behalf of all the remaining family members who seek to accompany the principal intending immigrant and who are not included in the first joint sponsor's affidavit. There may not be more than two joint sponsors for the family group consisting of the principal intending immigrant and the accompanying spouse and children.

* * * * *

(g) * * *

(2)(i) To avoid inadmissibility under section 212(a)(4) of the Act, an alien who applies for an immigrant visa, admission, or adjustment of status as an alien who is following-to-join a principal intending immigrant must submit a new affidavit(s) of support, together with all documents or other evidence necessary to prove that the new affidavits comply with the requirements of section 213A of the Act and 8 CFR part 213a.

(ii) When paragraph (g)(2)(i) of this section requires the filing of a new affidavit for an alien who seeks to follow-to-join a principal sponsored immigrant, the same sponsor who filed the visa petition and affidavit of support for the principal sponsored immigrant must file the new affidavit on behalf of the alien seeking to follow-to-join. If that person has died, then the alien seeking to follow-to-join is inadmissible unless a substitute sponsor, as defined by 8 CFR 213a.1, signs a new affidavit that meets the requirements of this section. Persons other than the person or persons who signed the original joint affidavits on behalf of the principal sponsored immigrant may sign a new joint affidavit on behalf of an alien who seeks to follow-to-join a principal sponsored immigrant.

* * * * *

■ 83. Section 213a.3 is revised to read as follows:

§ 213a.3 Change of address.

(a) *Submission of address change.* (1) *Filing requirements.* If the address of a sponsor (including a substitute sponsor or joint sponsor) changes while the sponsor's support obligation is in effect, the sponsor shall file a change of address notice within 30 days, in a manner as prescribed by USCIS on its address change form instructions.

(2) *Proof of mailing.* USCIS will accept a photocopy of the change of address form together with proof of the form's delivery to USCIS as evidence that the sponsor has complied with this requirement.

(3) *Electronic notices.* USCIS will provide the sponsor with a receipt notice for an address change.

(4) *Alien sponsors.* If the sponsor is an alien, the sponsor must still comply with the requirements of 8 CFR 265.1 to notify USCIS of his or her change of address.

(b) *Civil penalty.* If the sponsor fails to give notice in accordance with paragraph (a) of this section, DHS may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(A) of the Act. Except, if the sponsor, knowing that the sponsored immigrant has received any means-tested public benefit, fails to give notice in accordance with paragraph (a) of this section, DHS may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(B) of the Act. The procedure for imposing a civil penalty is established at 8 CFR part 280.

§ 213a.4 [Amended]

■ 84. Section 213a.4 is amended by:
■ a. Revising the term ''8 CFR 103.5a(a)(2)'' to read ''8 CFR 103.8(a)(2)'' in paragraph (a)(1)(i); and
■ b. Revising the phrases ''a Form I–864 or Form I–864A'' and ''the Form I–864 or Form I–864A'' to read ''an affidavit of support'' in the first sentence in paragraph (a)(3).

■ 85. Section 213a.5 is revised to read as follows:

§ 213a.5 Relationship of this part to other affidavits of support.

Nothing in this part precludes the continued use of other affidavits of support provided by USCIS in a case other than a case described in § 213a.2(a)(2). The obligations of section 213A of the Act do not bind a person who executes such other USCIS affidavits of support. Persons sponsoring an Amerasian alien described in section 204(f)(2) of the Act remain subject to the provisions of section 204(f)(4)(B) of the Act and 8 CFR 204.4(i), as appropriate.

PART 223—REENTRY PERMITS, REFUGEE TRAVEL DOCUMENTS, AND ADVANCE PAROLE DOCUMENTS

■ 86. The authority citation for part 223 continues to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1186a, 1203, 1225, 1226, 1227, 1251; Protocol Relating to the Status of Refugees, Nov. 1, 1968, 19 U.S.T. 6223 (TIAS) 6577; 8 CFR part 2.

■ 87. Section 223.2 is revised to read as follows:

§ 223.2 Application and processing.

(a) *Application.* An applicant must submit an application for a reentry permit, refugee travel document, or advance parole on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(b) *Filing eligibility.* (1) *Reentry permit.* An applicant for a reentry permit must file such application while in the United States and in status as a lawful permanent resident or conditional permanent resident.

(2) *Refugee travel document.* (i) Except as provided in paragraph (b)(2)(ii) of this section, an applicant for a refugee travel document must submit the application while in the United States and in valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act or is a permanent resident who received such status as a direct result of his or her asylum or refugee status.

(ii) *Discretionary authority to accept a refugee travel document application from an alien not within the United States.* As a matter of discretion, the Service office with jurisdiction over a port-of-entry or pre-flight inspection location where the alien is seeking admission, or the overseas Service office where the alien is physically present, may accept and adjudicate an application for a refugee travel document from an alien who previously had been admitted to the United States as a refugee, or who previously had been granted asylum status in the United States, and who departed from the United States without having applied for such refugee travel document, provided the officer:

(A) Is satisfied that the alien did not intend to abandon his or her refugee or asylum status at the time of departure from the United States;

(B) The alien did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylum status; and

(C) The alien has been outside the United States for less than 1 year since his or her last departure.

(c) *Ineligibility.* (1) *Prior document still valid.* An application for a reentry permit or refugee travel document will be denied if the applicant was previously issued a reentry permit or refugee travel document which is still valid, unless it was returned to USCIS or it is demonstrated that it was lost.

(2) *Extended absences.* A reentry permit issued to a person who, since becoming a permanent resident or during the last five years, whichever is less, has been outside the United States for more than four years in the aggregate, shall be limited to a validity of one year, except that a permit with a validity of two years may be issued to:

(i) A permanent resident described in 8 CFR 211.1(a)(6) or (a)(7);

(ii) A permanent resident employed by a public international organization of which the United States is a member by treaty or statute, and his or her permanent resident spouse and children; or

(iii) A permanent resident who is a professional athlete who regularly competes in the United States and worldwide.

(3) *Permanent resident entitled to nonimmigrant diplomatic or treaty status.* A permanent resident entitled to nonimmigrant status under section 101(a)(15)(A), (E), or (G) of the Act because of occupational status may only be issued a reentry permit if the applicant executes and submits with the application, or has previously executed and submitted, a written waiver as required by 8 CFR part 247.

(d) *Effect of travel before a decision is made.* Departure from the United States before a decision is made on an application for a reentry permit or refugee travel document will not affect the application.

(e) *Processing.* USCIS may approve or deny a request for a reentry permit or refugee travel document as an exercise of discretion. If it approves the application, USCIS will issue an appropriate document.

(f) *Effect on proceedings.* Issuance of a reentry permit or refugee travel document to a person in exclusion, deportation, or removal proceedings shall not affect those proceedings.

(g) *Appeal.* Denial of an application for a reentry permit or refugee travel document may be appealed in accordance with 8 CFR 103.3.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 88. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 U.S.C. 1185 note (Pub. L. 108–458, § 7209, 118 Stat. 3638).

§ 235.3 [Amended]

■ 89. In § 235.3, paragraph (b)(1)(i) is amended by revising the term ''§ 1.1(q) of this chapter'' to read ''8 CFR 1.2''.

§ 235.8 [Amended]

■ 90. In § 235.8, paragraph (e) is amended by revising the term ''§ 1.1(q) of this chapter'' to read ''8 CFR 1.2''.

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

■ 91. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

§ 236.2 [Amended]

■ 92. In § 236.2, paragraph (a) is amended by revising the term ''§ 103.5a(c) of this chapter'' to read ''8 CFR 103.8(c)''.

§ 236.16 [Amended]

■ 93. Section 236.16 is amended by revising the phrase ''using Form I–131, Application for Travel Document'' to read ''in accordance with 8 CFR

223.2(a)''in the first sentence and revising the phrase ''the district director'' to read ''USCIS'' in the second sentence.

§ 236.18 [Amended]

■ 94. In § 236.18, paragraph (b) is amended by revising the term ''§ 103.5a of this chapter'' to read ''8 CFR 103.8(a)(2)'' wherever that term appears.

PART 238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

■ 95. The authority citation for part 238 continues to read as follows:

Authority: 8 U.S.C. 1228; 8 CFR part 2.

■ 96. In § 238.1, paragraph (b)(2)(i) is amended by revising the term ''§§ 103.5a(a)(2) and 103.5a(c)(2) of this chapter'' to read ''8 CFR 103.8''.

PART 240—VOLUNTARY DEPARTURE, SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL

■ 97. The heading for part 240 is revised as set forth above.

■ 98. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; sections 202 and 203, Pub. L. 105–100, 111 Stat. 2160, 2193; section 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

■ 99. Section 240.67 is amended by revising paragraph (a) introductory text to read as follows:

§ 240.67 Procedure for interview before an asylum officer.

(a) *Fingerprinting requirements.* USCIS will notify each applicant 14 years of age or older to appear for an interview only after the applicant has complied with fingerprinting requirements pursuant to 8 CFR 103.16, and USCIS has received a definitive response from the FBI that a full criminal background check has been completed. A definitive response that a full criminal background check on an applicant has been completed includes:

* * * * *

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

■ 100. The authority citation for part 241 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1228, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101, et seq.); 8 CFR part 2.

§ 241.4 [Amended]

■ 101. In § 241.4, paragraph (d)(2), first sentence is amended by revising the term ''8 CFR 103.5a'' to read ''8 CFR 103.8''.

■ 102. Section 241.5 is amended by revising paragraph (a)(5) to read as follows:

§ 241.5 Conditions of release after removal period.

(a) * * *

(5) A requirement that the alien provide DHS with written notice of any change of address in the prescribed manner.

* * * * *

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

■ 103. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.3 [Amended]

■ 104. Section 244.3 is amended by:

■ a. Revising the term ''the Service'' to read ''USCIS'' in the first sentence in paragraph (b);

■ b. Removing the phrase ''of grounds of inadmissibility on Form I–601 (Application for waiver of grounds of excludability)'' in the second sentence in paragraph (b);

■ c. Revising the term ''The Service'' to read ''USCIS'' in paragraph (c) introductory text.

§ 244.4 [Amended]

■ 105. In § 244.4, paragraph (b) is amended by revising the term ''section 243(h)(2) of the Act'' to read ''section 208(b)(2)(A) of the Act''.

§ 244.5 [Amended]

■ 106. In § 244.5, paragraph (a) is amended by revising the term ''the Attorney General'' to read ''DHS'' wherever the term appears.

■ 107. Section 244.6 is revised to read as follows:

§ 244.6 Application.

(a) An application for Temporary Protected Status must be submitted in accordance with the form instructions, the applicable country-specific Federal Register notice that announces the procedures for TPS registration or re-registration, and 8 CFR 103.2, except as otherwise provided in this section, with the appropriate fees and biometric information as described in 8 CFR 103.7(b)(1), 103.16, and 103.17.

(b) An applicant for TPS may also request employment authorization pursuant to 8 CFR 274a. Those applicants between the ages of 14 and 65 who are not requesting authorization to work will not be charged a fee for an application for employment authorization.

§ 244.7 [Amended]

■ 108. Section 244.7 is amended by:

■ a. Revising the phrase ''Form I–821, Application for Temporary Protected Status'' to read ''the form designated by USCIS with any prescribed fees and in accordance with the form instructions'' in paragraph (a); and

■ b. Revising the term ''Attorney General'' to read ''DHS'' in paragraph (b).

§ 244.9 [Amended]

■ 109. In § 244.9, paragraph (a)(4) is amended by revising the phrase ''Form I–551 or Form I–94'' to read ''evidence of admission for lawful permanent residence or nonimmigrant status''.

■ 110. Section 244.10 is amended by:

■ a. Revising the section heading; and

■ b. Revising paragraphs (a), (b) (c) and (d).

The revisions read as follows:

§ 244.10 Decision and appeal.

(a) *Temporary treatment benefits.* USCIS will grant temporary treatment benefits to the applicant if the applicant establishes prima facie eligibility for Temporary Protected Status in accordance with 8 CFR 244.5.

(b) *Temporary Protected Status.* Upon review of the evidence presented, USCIS may approve or deny the application for Temporary Protected Status in the exercise of discretion, consistent with the standards for eligibility in 8 CFR 244.2, 244.3, and 244.4.

(c) *Denial.* The initial decision to deny Temporary Protected Status, a waiver of inadmissibility, or temporary treatment benefits shall be in writing served in person or by mail to the alien's most recent address provided to the Service and shall state the reason(s) for the denial. Except as otherwise provided in this section, the alien will be given written notice of his or her right to appeal. If an appeal is filed, the administrative record shall be forwarded to the USCIS AAO for review and decision, except as otherwise provided in this section.

(1) If the basis for the denial of the Temporary Protected Status constitutes a ground for deportability or inadmissibility which renders the alien ineligible for Temporary Protected Status under § 244.4 or inadmissible under § 244.3(c), the decision shall

include a charging document which sets forth such ground(s).

(2) If such a charging document is issued, the alien shall not have the right to appeal the USCIS decision denying Temporary Protected Status as provided in 8 CFR 103.3. However, the decision will also apprise the alien of his or her right to a *de novo* determination of his or her eligibility for Temporary Protected Status in removal proceedings pursuant to section 240 of the Act and 8 CFR 1244.18.

(d) *Administrative appeal.* The appellate decision will be served in accordance with 8 CFR 103.8. If the appeal is dismissed, the decision must state the reasons for dismissal.

(1) If the appeal is dismissed on appeal under 8 CFR 244.18(b), the decision shall also apprise the alien of his or her right to a *de novo* determination of eligibility for Temporary Protected Status in removal proceedings pursuant to section 240 of the Act and 8 CFR 1244.18.

(2) If the appeal is dismissed, USCIS may issue a charging document if no charging document is presently filed with the Immigration Court.

(3) If a charging document has previously been filed or is pending before the Immigration Court, either party may move to re-calendar the case after the administrative appeal is dismissed.

* * * * *

§ 244.11 [Amended]

■ 111. Section 244.11 is amended by revising the term ''§ 3.3 of this chapter'' to read ''8 CFR 1003''.

§ 244.12 [Amended]

■ 112. Section 244.12, is amended by:

■ a. Revising the term ''the INS'' to read ''USCIS'' in paragraphs (a) and (c); and

■ b. Revising the phrase ''appealed to the Administrative Appeals Unit'' to read ''pending administrative appeal'' in paragraph (d).

§ 244.14 [Amended]

■ 113. Section 244.14 is amended by:

■ a. Revising the term ''*director''* to read ''*USCIS''* in paragraph (a) heading;

■ b. Revising the term ''The director'' to read ''USCIS'' in paragraph (a) introductory text;

■ c. Revising the term ''the district director'' to read ''USCIS'' in paragraph (a)(2) last sentence;

■ d. Revising the term ''Attorney General'' to read ''DHS'' in paragraph (a)(3);

■ e. Revising the term ''*director''* to read ''*USCIS''* in paragraph (b) heading; and by

■ f. Revising the term ''§ 240.14(a)(3)'' to read ''8 CFR 244.14(a)(3)'' and the term ''§ 103.5a of this chapter'' to read ''8 CFR 103.8(a)(2)'' in paragraph (b)(1).

§ 244.16 [Amended]

■ 114. In § 244.16, the term ''the Department of Justice'' is revised to read ''DHS''.

■ 115. Section 244.17 is revised to read as follows:

§ 244.17 Periodic registration.

(a) Aliens granted Temporary Protected Status must re-register periodically in accordance with USCIS instructions. Such registration applies to nationals of those foreign states designated or redesignated for more than one year by DHS. Applicants for periodic re-registration must apply during the registration period provided by USCIS. Re-registering applicants will not need to re-pay the TPS application fee that was required for initial registration except that aliens requesting employment authorization must submit the application fee for employment authorization. The biometric service fee described in 103.7(b), or an approved fee waiver, will be required of applicants age 14 and over. By completing the application, applicants attest to their continuing eligibility. Such applicants do not need to submit additional supporting documents unless USCIS requests them to do so.

(b) If an alien fails to register without good cause, USCIS will withdraw Temporary Protected Status. USCIS may, for good cause, accept and approve an untimely registration request.

■ 116. Section 244.18 is amended by revising paragraphs (b) and (d) to read as follows:

§ 244.18 Issuance of charging documents; detention.

* * * * *

(b) The filing of the charging document by DHS with the Immigration Court renders inapplicable any other administrative, adjudication or review of eligibility for Temporary Protected Status. The alien shall have the right to a *de novo* determination of his or her eligibility for Temporary Protected Status in removal proceedings pursuant to section 240 of the Act and 8 CFR 1244.18. Review by the Board of Immigration Appeals shall be the exclusive administrative appellate review procedure. If an appeal is already pending before the Administrative Appeals Office (AAO), USCIS will notify the AAO of the filing of the charging document, in which case the pending appeal shall be dismissed and the record of proceeding returned to the jurisdiction where the charging document was filed.

* * * * *

(d) An alien who is determined by USCIS deportable or inadmissible upon grounds which would have rendered the alien ineligible for such status as provided in 8 CFR 244.3(c) and 8 CFR 244.4 may be detained under the provisions of this chapter pending removal proceedings. Such alien may be removed from the United States upon entry of a final order of removal.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 117. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 118. Section 245.1 is amended by:

■ a. Revising the term to ''section 214(k)'' to read: ''section 214(l)'' in the last sentence in paragraph (c)(2);

■ b. Removing and reserving paragraph (e)(2);

■ c. Revising the third sentence in paragraph (g)(1); and by

■ d. Removing the fourth sentence in paragraph (g)(1).

The revision reads as follows:

§ 245.1 Eligibility.

* * * * *

(g) * * *

(1) * * * A preference immigrant visa is considered available for accepting and processing if the applicant has a priority date on the waiting list which is earlier than the date shown in the Bulletin (or the Bulletin shows that numbers for visa applicants in his or her category are current). * * *

* * * * *

§ 245.2 [Amended]

■ 119. Section 245.2 is amended by removing the phrase '', except when the applicant has established eligibility for the benefits of Public Law 101–238'' in the second sentence in paragraph (a)(5)(ii).

■ 120. In § 245.7, paragraph (a) is revised to read as follows:

§ 245.7 Adjustment of status of certain Soviet and Indochinese parolees under the Foreign Operations Appropriations Act for Fiscal Year 1990 (Pub. L. 101–167). (a) *Application.* Each person applying for benefits under section 599E of Public Law 101–167, 103 Stat. 1195, 1263, must file an application on the form prescribed by

USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

* * * * *

§ 245.9 [Removed and Reserved]

■ 121. Section 245.9 is removed and reserved.

■ 122. In § 245.10, paragraph (n)(2) is revised to read as follows:

§ 245.10 Adjustment of status upon payment of additional sum under Public Law 103–317.

* * * * *

(n) * * *

(2) To demonstrate physical presence on December 21, 2000, the alien may submit copies of documents issued by the former INS or EOIR such as arrival-departure forms or notices to appear in immigration court.

* * * * *

■ 123. In § 245.11, remove the last two sentences in paragraph (f) and add a new sentence to read as follows:

§ 245.11 Adjustment of aliens in S nonimmigrant classification.

* * * * *

(f) * * * The applicant may request employment authorization or permission to travel outside the United States while the application is pending by filing an application pursuant to 8 CFR 274a.13 or 8 CFR 223.2.

* * * * *

§ 245.12 [Removed and Reserved]

■ 124. Section 245.12 is removed and reserved.

§ 245.13 [Removed and Reserved]

■ 125. Section 245.13 is removed and reserved.

■ 126. Section 245.15 is amended by:

■ a. Revising the phrase ''Advance Authorization for Parole (Form I–512)'' to read ''advance parole authorization'' and revising the phrase ''Advance Authorization for Parole'' to read ''authorization'' in paragraph (c)(4)(ii);

■ b. Revising paragraph (g)(1);

■ c. Revising paragraph (n)(1);

■ d. Revising the phrase ''the Director of the Nebraska Service Center verifies that Service'' to read ''USCIS verifies that DHS'' and by revising the term ''the Director may approve'' to read ''USCIS may approve'' in the first sentence in paragraph (n)(2);

■ e. Revising the term ''the Service'' to read ''USCIS'' in the second sentence in paragraph (n)(2);

■ f. Revising paragraph (s)(1);

■ g. Revising paragraph (t)(1);

■ h. Revising the phrase ''an Application for Travel Document (Form I–131) with the Nebraska Service Center, at P.O. Box 87245, Lincoln, NE 68501–7245'' to read ''a request on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions'' in the first sentence of paragraph (t)(2)(i); and

■ i. Revising the term ''Form I–485'' to read ''application for adjustment of status'' in the second sentence in paragraph (t)(2)(i).

The revisions read as follows:

§ 245.15 Adjustment of Status of Certain Haitian Nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

* * * * *

(g) * * *

(1) *Filing of applications with USCIS.* USCIS has jurisdiction over all applications for the benefits of section 902 of HRIFA as a principal applicant or as a dependent under this section, except for applications filed by aliens who are in pending immigration proceedings as provided in paragraph (g)(2) of this section. All applications filed with USCIS for the benefits of section 902 of HRIFA must be submitted on the form designated by USCIS with the fees prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions. After proper filing of the application, USCIS will instruct the applicant to appear for biometrics collection as prescribed in 8 CFR 103.16.

* * * * *

(n) * * *

(1) *Application for employment authorization.* An applicant for adjustment of status under section 902 of HRIFA who wishes to obtain initial or continued employment authorization during the pendency of the adjustment application must file an application on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions. The applicant may submit the application either concurrently with or subsequent to the filing of the application for HRIFA benefits.

* * * * *

(s) *Action of immigration judge upon referral of decision by a notice of certification.* (1) *General.* Upon the referral by a notice of certification of a decision to deny the application, in accordance with paragraph (r)(3) of this section, the immigration judge will conduct a hearing to determine whether the alien is eligible for adjustment of status under section 902 of HRIFA in accordance with this paragraph (s)(1).

* * * * *

(t) * * *

(1) *Travel from and return to the United States while the application for adjustment of status is pending.* If an applicant for benefits under section 902 of HRIFA desires to travel outside, and return to, the United States while the application for adjustment of status is pending, he or she must file a request for advance parole authorization on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions. Unless the applicant files an advance parole request prior to departing from the United States and USCIS approves such request, his or her application for adjustment of status under section 902 of HRIFA is deemed to be abandoned as of the moment of departure. Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act.

* * * * *

■ 127. Section 245.18 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraph (d)(1);

■ c. Revising the term ''the Service'' to read ''USCIS'' in paragraph (d)(2); and

■ d. Revising the last sentence in paragraph (k).

The revisions read as follows:

§ 245.18 Physicians with approved employment-based petitions serving in a medically underserved area or a Veterans Affairs facility.

* * * * *

(d) *Employment authorization.* (1) Once USCIS has approved a petition described in paragraph (a) of this section, the alien physician may apply for permanent residence and employment authorization on the forms designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

* * * * *

(k) * * * Such physicians may apply for advance parole on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

* * * * *

§ 245.20 [Removed and Reserved]

■ 128. Section 245.20 is removed and reserved.

■ 129–130. Section 245.21 is amended by:

■ a. Adding the word ''and'' at the end of paragraph (a)(3);

■ b. Removing paragraph (a)(4);

■ c. Redesignating paragraph (a)(5) as paragraph (a)(4);

■ d. Revising paragraph (b);

■ e. Revising the second sentence in paragraph (d)(1);

■ f. Revising paragraph (d)(2);
■ g. Revising the last sentence in paragraph (f);
■ h. Revising paragraph (h);
■ i. Revising paragraph (i);
■ j. Revising the terms, ''Service'' and ''Service's'' to read ''USCIS''' in paragraph (j);
■ k. Removing paragraph (m); and
■ l. By revising the terms ''The Service'' and ''the Service'' to read ''USCIS'' wherever the terms appear in the following paragraphs:
■ i. Paragraph (a) introductory text;
■ ii. Paragraph (c);
■ iii. Paragraph (d) introductory text;
■ iv. Paragraph (d)(4);
■ v. Paragraph (g)(3);
■ vi. Paragraph (j);
■ vii. Paragraph (k); and
■ viii. Paragraph (l).

The revisions read as follows:

§ 245.21 Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos.

* * * * *

(b) *Application.* An applicant must submit an application on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions. Applicants who are 14 through 79 years of age must also submit the biometrics service fee described in 8 CFR 103.17.

* * * * *

(d) * * *

(1) * * * An alien who is eligible for adjustment of status under section 586 of Public Law 106–429 may request a stay of removal during the pendency of the application. * * *

(2) DHS will exercise its discretion not to grant a stay of removal, deportation, or exclusion with respect to an alien who is inadmissible on any of the grounds specified in paragraph (m)(3) of this section, unless there is substantial reason to believe that USCIS will grant the necessary waivers of inadmissibility.

* * * * *

(f) * * * In order to obtain a waiver for any of these grounds, the applicant must submit an application on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

* * * * *

(h) *Employment authorization.* Applicants who want to obtain employment authorization based on a pending application for adjustment of status under this section may apply on the form specified by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(i) *Travel while an application to adjust status is pending.* An applicant who wishes to travel outside the United States while the application is pending must obtain advance permission by filing the application specified by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

* * * * *

■ 131. In § 245.22, paragraph (c) is revised to read as follows:

§ 245.22 Evidence to demonstrate an alien's physical presence in the United States on a specific date.

* * * * *

(c) *DHS-issued documentation.* An applicant for permanent residence may demonstrate physical presence by submitting DHS-issued (or predecessor agency-issued) documentation such as an arrival-departure form or notice to appear in immigration proceedings.

* * * * *

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

■ 132. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a, and 1255a note.

■ 133. The heading for part 245a is revised as set forth above.

§ 245a.4 [Amended]

■ 134. In § 245a.4, paragraph (b)(16), third sentence is amended by revising the term ''§ 103.5a(b) of this Act'' to read ''8 CFR 103.8(b)''.

§ 245a.12 [Amended]

■ 135. In § 245a.12, paragraph (b) introductory text, third sentence is amended by revising the term ''fingerprinting as prescribed in § 103.2(e) of this chapter'' to read ''fingerprinting as prescribed in 8 CFR 103.16''.

§ 245a.37 [Amended]

■ 136. In § 245a.37, paragraph (b) is amended by revising the term ''§ 103.5a of this chapter'' to read ''8 CFR 103.8'' wherever that term appears.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 137. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

§ 248.1 [Amended]

■ 138. Section 248.1 is amended by:
■ a. Revising the term ''the Service'' to read ''USCIS'' in paragraph (b) introductory text;
■ b. Revising the term ''the Service'' to read ''USCIS'' in paragraph (b)(1);
■ c. Revising the phrase ''The district director or service center director shall'' to read ''USCIS will'' in the second sentence in paragraph (c)(1);
■ d. Revising the phrase ''The district director or service center director'' to read ''USCIS'' in the last sentence in paragraph (c)(3); and
■ e. Removing the phrase ''before the Service'' in the last sentence in paragraph (c)(3).

■ 139. Section 248.3 is amended by:
■ a. Adding introductory text;
■ b. Revising paragraph (a);
■ c. Revising paragraph (b);
■ d. Revising the phrase ''Form I–539 and be accompanied by a Form I–566, completed and endorsed in accordance with the instructions on that form'' to read ''the prescribed application accompanied by the appropriate endorsement from the Department of State recommending the change of status'' in the second sentence in paragraph (c);
■ e. Removing and reserving paragraph (d);
■ f. Revising the term ''sections 101(a)(15)(E), (H), (I), (J), (L), or (Q)(ii) of the Act'' to read ''sections 101(a)(15)(E), (H), (I), (J), or (L) of the Act'' in paragraph (e)(2);
■ g. Revising the term ''the district director'' to read ''USCIS'' in the last sentence in paragraph (f); and
■ h. Revising the phrase ''Form I–539, Application to Extend/Change Nonimmigrant Status, with the appropriate fee, and Form I–854, Inter-Agency Alien Witness and Informant Record, with attachments'' to read ''the forms designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions'' in paragraph (h) introductory text.

The revisions read as follows:

§ 248.3 Petition and application.

Requests for a change of status must be filed on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b) and in accordance with the form instructions.

(a) *Petition by employer.* An employer must submit a petition for a change of status to E–1 treaty trader, E–2 treaty investor, H–1C, H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q–1, R–1, or TN nonimmigrant.

(b) *Application by nonimmigrant.* (1) *Individual applicant.* Any nonimmigrant who seeks to change status to:

(i) A dependent nonimmigrant classification as the spouse or child of

a principal whose nonimmigrant classification is listed in paragraph (a) of this section, or

(ii) Any other nonimmigrant classification not listed in paragraph (a) of this section must apply for a change of status on his or her own behalf.

(2) *Multiple applicants.* More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on the principal's nonimmigrant status.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

■ 140. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305; 8 CFR part 2.

■ 141. Section 264.1 is amended by:

■ a. Removing the entry for Form ''I–485A'' from the table in paragraph (a);

■ b. Removing the entries for Forms ''I–688'', ''I–688A'' and ''I–688B'' from the table in paragraph (b);

■ c. Adding the entries for ''Form I–862'' and ''Form I–863'' in proper numerical sequence in the table in paragraph (b);

■ d. Revising paragraph (c);

■ e. Revising the term ''Service'' to read ''USCIS'' in paragraph (d);

■ f. Revising paragraph (g); and

■ g. Removing paragraphs (h) and (i).

The revisions read as follows:

§ 264.1 Registration and fingerprinting.

* * * * *

(b) * * *

Form No. and Class

* * * * *

Form I–862, Notice to Appear—Aliens against whom removal proceedings are being instituted.

Form I–863, Notice of Referral to Immigration Judge—Aliens against whom removal proceedings are being instituted.

* * * * *

(c) *Replacement of alien registration.* Any alien whose registration document is not available for any reason must immediately apply for a replacement document in the manner prescribed by USCIS.

* * * * *

(g) *Registration and fingerprinting of children who reach age 14.* Within 30 days after reaching the age of 14, any alien in the United States not exempt from alien registration under the Act and this chapter must apply for registration and fingerprinting, unless fingerprinting is waived under paragraph (e) of this section, in accordance with applicable form instructions.

(1) *Permanent residents.* If such alien is a lawful permanent resident of the United States and is temporarily absent from the United States when he reaches the age of 14, he must apply for registration and provide a photograph within 30 days of his or her return to the United States in accordance with applicable form instructions. The alien, if a lawful permanent resident of the United States, must surrender any prior evidence of alien registration. USCIS will issue the alien new evidence of alien registration.

(2) *Others.* In the case of an alien who is not a lawful permanent resident, the alien's previously issued registration document will be noted to show that he or she has been registered and the date of registration.

§ 264.2 [Amended]

■ 142. In § 264.2, paragraph (d) is amended by revising the term ''be fingerprinted on Form FD–258, Applicant Card, as prescribed in § 103.2(e) of this chapter'' to read ''be fingerprinted as prescribed in 8 CFR 103.16.''

■ 143. Section 264.5 is amended by:

■ a. Revising paragraph (a);

■ b. Revising the term ''Form I–90'' to read ''the designated form'' wherever the term appears in paragraphs (c)(1) and (2);

■ c. Revising paragraph (d) introductory text;

■ d. Revising paragraph (e);

■ e. Revising paragraph (g) and by

■ f. Adding paragraphs (h) and (i).

The revisions read as follows:

§ 264.5 Application for replacement Permanent Resident Card.

(a) *Filing instructions.* A request to replace a Permanent Resident Card must be filed in accordance with the appropriate form instructions and with the fee specified in 8 CFR 103.7(b)(1); except that no fee is required for an application filed pursuant to paragraphs (b)(7) through (9) of this section, or paragraphs (d)(2) or (4) of this section.

* * * * *

(d) *Conditional permanent residents required to file.* A conditional permanent resident whose card is expiring may apply to have the conditions on residence removed in accordance with 8 CFR 216.4 or 8 CFR 216.6. A conditional resident who seeks to replace a permanent resident card that is not expiring within 90 days may apply for a replacement card on the form prescribed by USCIS:

* * * * *

(e) *Supporting documentation.* (1) The prior Permanent Resident Card must be surrendered to USCIS if a new card is being requested in accordance with paragraphs (b)(2) through (5) and (b)(8) and (9) of this section.

(2) A request to replace a Permanent Resident Card filed pursuant to paragraph (b)(4) of this section must include evidence of the name change such as a court order or marriage certificate.

(3) A request to replace a Permanent Resident Card in order to change any other biographic data on the card must include documentary evidence verifying the new data.

* * * * *

(g) *Eligibility for evidence of permanent residence while in deportation, exclusion, or removal proceedings.* A person in deportation, exclusion, or removal proceedings is entitled to evidence of permanent resident status until ordered excluded, deported, or removed. USCIS will issue such evidence in the form of a temporary permanent resident document that will remain valid until the proceedings are concluded. Issuance of evidence of permanent residence to an alien who had permanent resident status when the proceedings commenced shall not affect those proceedings.

(h) *Temporary evidence of registration.* USCIS may issue temporary evidence of registration and lawful permanent resident status to a lawful permanent resident alien who is departing temporarily from the United States and has applied for issuance of a replacement permanent resident card if USCIS is unable to issue and deliver such card prior to the alien's contemplated return to the United States. The alien must surrender such temporary evidence upon receipt of his or her permanent resident card.

(i) *Waiver of requirements.* USCIS may waive the photograph, in person filing, and fingerprinting requirements of this section in cases of confinement due to advanced age or physical infirmity.

■ 144. Section 264.6 is revised to read as follows:

§ 264.6 Application for a nonimmigrant arrival-departure record.

(a) *Eligibility.* USCIS may issue a new or replacement arrival-departure record to a nonimmigrant who seeks:

(1) To replace a lost or stolen record;
(2) To replace a mutilated record; or
(3) Was not issued an arrival-departure record pursuant to 8 CFR 235.1(h)(1)(i), (iii), (iv), (v), or (vi) when last admitted as a nonimmigrant, and has not since been issued such record but now requires one.

(b) *Application.* A nonimmigrant may request issuance or replacement of a nonimmigrant arrival-departure record by applying on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(c) *Processing.* A pending application filed under paragraph (a) of this section is temporary evidence of registration. If the application is approved, USCIS will issue an arrival-departure document. There is no appeal from the denial of this application.

PART 265—NOTICES OF ADDRESS

■ 145. The authority citation for part 265 is revised to read as follows:

Authority: 8 U.S.C. 1103 and 1305.

■ 146. Section 265.1 is revised to read as follows:

§ 265.1 Reporting change of address.

Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act must report each change of address and new address within 10 days of such change in accordance with instructions provided by USCIS.

PART 270—PENALTIES FOR DOCUMENT FRAUD

■ 147. The authority citation for part 270 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

§ 270.2 [Amended]

■ 148. Section 270.2 is amended by revising the term ''§ 103.5a(a)(2) of this chapter'' to read ''8 CFR 103.8(a)(2)'' wherever that term appears in the following places:
■ a. Paragraph (d) and
■ b. Paragraph (i).

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 149. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

■ 150. Section 274a.12 is amended by:
■ a. Revising the term ''BCIS'' to read ''USCIS'' wherever that term appears in paragraph (a)(5);
■ b. Revising paragraph (b)(6)(iv);
■ c. Revising the term ''BCIS'' to read ''USCIS'' in paragraph (c) introductory text;
■ d. Revising paragraph (c)(1);
■ e. Revising paragraph (c)(4); and
■ f. Removing and reserving paragraph (c)(23).

The revisions read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(6) * * *

(iv) An employment authorization document under paragraph (c)(3)(i)(C) of this section based on a 17-month STEM Optional Practical Training extension, and whose timely filed employment authorization request is pending and employment authorization issued under paragraph (c)(3)(i)(B) of this section has expired. Employment is authorized beginning on the expiration date of the authorization issued under paragraph (c)(3)(i)(B) of this section and ending on the date of USCIS' written decision on the current employment authorization request, but not to exceed 180 days; or

* * * * *

(c) * * *

(1) An alien spouse or unmarried dependent child; son or daughter of a foreign government official (A–1 or A–2) pursuant to 8 CFR 214.2(a)(2) and who presents an endorsement from an authorized representative of the Department of State;

* * * * *

(4) An alien spouse or unmarried dependent child; son or daughter of a foreign government official (G–1, G–3 or G–4) pursuant to 8 CFR 214.2(g) and who presents an endorsement from an authorized representative of the Department of State;

* * * * *

■ 151. Section 274a.13 is amended by:
■ a. Revising paragraph (a);
■ b. Removing the term ''INS'' in paragraph (b); and
■ c. Revising paragraph (d).

The revision reads as follows:

§ 274a.13 Application for employment authorization.

(a) *Application.* Aliens authorized to be employed under sections 274a.12(a)(3), (4), (6) through (8), (a)(10) through (15), and (a)(20) must file an application in order to obtain documentation evidencing this fact.

(1) Aliens who may apply for employment authorization under 8 CFR 274a.12(c), except for those who may apply under 8 CFR 274a.12(c)(8), must apply on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions. The approval of applications filed under 8 CFR 274a.12(c), except for 8 CFR 274a.12(c)(8), are within the discretion of USCIS. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses.

(2) An initial employment authorization request for asylum applicants under 8 CFR 274a.12(c)(8) must be filed on the form designated by USCIS in accordance with the form instructions. The applicant also must submit a copy of the underlying application for asylum or withholding of deportation, together with evidence that the application has been filed in accordance with 8 CFR 208.3 and 208.4. An application for an initial employment authorization or for a renewal of employment authorization filed in relation to a pending claim for asylum shall be adjudicated in accordance with 8 CFR 208.7. An application for renewal or replacement of employment authorization submitted in relation to a pending claim for asylum, as provided in 8 CFR 208.7, must be filed, with fee or application for waiver of such fee.

* * * * *

(d) *Interim employment authorization.* USCIS will adjudicate the application within 90 days from the date of receipt of the application, except in the case of an initial application for employment authorization under 8 CFR 274a.12(c)(8), which is governed by paragraph (a)(2) of this section, and 8 CFR 274a.12(c)(9) in so far as it is governed by 8 CFR 245.13(j) and 245.15(n). Failure to complete the adjudication within 90 days will result in the grant of an employment authorization document for a period not to exceed 240 days. Such authorization will be subject to any conditions noted on the employment authorization document. However, if USCIS adjudicates the application prior to the expiration date of the interim employment authorization and denies the individual's employment authorization application, the interim employment authorization granted under this section will automatically terminate as of the date of the adjudication and denial.

PART 287—FIELD OFFICERS; POWERS AND DUTIES

■ 152. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; Homeland Security Act of

2002, Pub. L. 107–296 (6 U.S.C. 1, *et seq.*); 8 CFR part 2.

§ 287.5 [Amended]

■ 153. Section 287.5 is amended by:
■ a. Removing the phrase ''as defined in 8 CFR 103.1(b)'' in paragraph (a) introductory text;
■ b. Revising the term ''the BCIS'' to read ''USCIS'' in paragraph (c)(1)(viii); and
■ c. Revising the term ''the BCIS'' to read ''USCIS'' in paragraph (c)(2)(viii).

§ 287.7 [Amended]

■ 154. In § 287.7, paragraph (b)(8) is amended by revising the term ''the BCIS'' to read ''USCIS''.

PART 292—REPRESENTATION AND APPEARANCES

■ 155. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

§ 292.1 [Amended]

■ 156. Section 292.1 is amended by revising the terms ''§ 1.1(f) of this chapter'' and ''8 CFR 1.1(f)'' to read ''8 CFR 1.2'' wherever the term appears in the following places:
■ a. Paragraph (a)(1); and
■ b. Paragraph (a)(6) first sentence.

§ 292.3 [Amended]

■ 157. Section 292.3 is amended by revising the terms ''8 CFR 1.1(f)'' and ''8 CFR 1.1(j)'', to read ''8 CFR 1.2'' in paragraph (a)(2);

■ 158. Section 292.4 is amended by revising paragraph (b) to read as follows:

§ 292.4 Appearances.

* * * * *

(b) A party to a proceeding and his or her attorney or representative will be permitted to examine the record of proceeding in accordance with 6 CFR part 5.

PART 299—IMMIGRATION FORMS

■ 159. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 8 CFR Part 2.

■ 160. Section 299.1 is revised to read as follows:

§ 299.1 Prescribed forms.

A listing of USCIS, ICE, and CBP approved forms referenced in chapter I can be viewed on the Office of Management and Budget Web site at *http://www.reginfo.gov.* A listing of approved USCIS forms can also be viewed on its Internet Web site.

§ 299.3 [Removed and Reserved]

■ 161. Section 299.3 is removed and reserved.

§ 299.5 [Removed and Reserved]

■ 162. Section 299.5 is removed and reserved.

PART 301—NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH

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

Authority: 8 U.S.C. 1103, 1401; 8 CFR part 2.

■ 164. Section 301.1 is amended by revising paragraph (a)(1) to read as follows:

§ 301.1 Procedures.

(a) * * *

(1) As provided in 8 CFR part 341, a person residing in the United States who desires to be documented as a United States citizen pursuant to section 301(h) of the Act may apply for a passport at a United States passport agency or may submit an application on the form specified by USCIS in accordance with the form instructions and with the fee prescribed by 8 CFR 103.7(b)(1). The applicant will be notified when and where to appear before a USCIS officer for examination on his or her application.

* * * * *

PART 310—NATURALIZATION AUTHORITY

■ 165. The authority citation for part 310 continues to read as follows:

Authority: 8 U.S.C. 1103, 1421, 1443, 1447, 1448; 8 CFR 2.1.

§ 310.2 [Amended]

■ 166. Section 310.2, first sentence, is amended by revising the term ''The Service'' to read ''USCIS'' and the term ''Service district'' to read ''Service district, as defined in 8 CFR 316.1,''

PART 312—EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

■ 167. The authority citation for part 312 continues to read as follows:

Authority: 8 U.S.C. 1103, 1423, 1443, 1447, 1448.

■ 168. Section 312.1 is amended by revising paragraph (c) to read as follows:

§ 312.1 Literacy requirements.

* * * * *

(c) *Literacy examination.* (1) *Verbal skills.* The ability of an applicant to speak English will be determined by a designated immigration officer from the applicant's answers to questions normally asked in the course of the examination.

(2) *Reading and writing skills.* Except as noted in 8 CFR 312.3, an applicant's ability to read and write English must be tested in a manner prescribed by USCIS. USCIS will provide a description of test study materials and testing procedures on the USCIS Internet Web site.

■ 169. Section 312.2 is amended by revising paragraph (c) to read as follows:

§ 312.2 Knowledge of history and government of the United States.

* * * * *

(c) *History and government examination.* (1) *Procedure.* The examination of an applicant's knowledge of the history and form of government of the United States must be given orally in English by a designated immigration officer, except:

(i) If the applicant is exempt from the English literacy requirement under 8 CFR 312.1(b), the examination may be conducted in the applicant's native language with the assistance of an interpreter selected in accordance with 8 CFR 312.4 but only if the applicant's command of spoken English is insufficient to conduct a valid examination in English;

(ii) The examination may be conducted in the applicant's native language, with the assistance of an interpreter selected in accordance with 8 CFR 312.4, if the applicant is required to satisfy and has satisfied the English literacy requirement under 8 CFR 312.1(a), but the officer conducting the examination determines that an inaccurate or incomplete record of the examination would result if the examination on technical or complex issues were conducted in English, or

(iii) The applicant has met the requirements of 8 CFR 312.3.

(2) *Scope and substance.* The scope of the examination will be limited to subject matters prescribed by USCIS. In choosing the subject matters, in phrasing questions and in evaluating responses, due consideration must be given to the applicant's:

(i) Education,

(ii) Background,

(iii) Age,

(iv) Length of residence in the United States,

(v) Opportunities available and efforts made to acquire the requisite knowledge, and

(vi) Any other elements or factors relevant to an appraisal of the adequacy of the applicant's knowledge and understanding.

■ 170. Section 312.3 is revised to read as follows:

§ 312.3 Testing of applicants who obtained permanent residence pursuant to section 245A of the Act.

An applicant who has obtained lawful permanent resident alien status pursuant to section 245A of the Act, and who, at that time, demonstrated English language proficiency in reading and writing, and knowledge of the government and history of the United States through either an examination administered by USCIS or the INS or a standardized section 312 test authorized by the USCIS or the INS for use with Legalization applicants as provided in section 245A(b)(1)(D)(iii) of the Act, will not be reexamined on those skills at the time of the naturalization interview. However, such applicant, unless otherwise exempt, must still demonstrate his or her ability to speak and understand English in accordance with 8 CFR 312.1(c)(1) and establish eligibility for naturalization through testimony in the English language.

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

■ 171. The authority citation for part 316 continues to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1427, 1443, 1447; 8 CFR part 2.

■ 172. Section 316.1 is revised to read as follows:

§ 316.1 Definitions.

As used in this part, the term:

Application means any form, as defined in 8 CFR part 1, on which an applicant requests a benefit relating to naturalization.

Residence in the Service district where the application is filed means residence in the geographical area over which a particular local field office of USCIS ordinarily has jurisdiction for purposes of naturalization, regardless of where or how USCIS may require such benefit request to be submitted, or whether jurisdiction for the purpose of adjudication is relocated or internally reassigned to another USCIS office.

Service district means the geographical area over which a particular local field office of USCIS ordinarily has jurisdiction for purposes of naturalization.

§ 316.2 [Amended]

■ 173. In § 316.2, paragraph (a)(5) is amended by removing the end the phrase ‘‘, and in which the alien seeks to file the application’’.

■ 174. Section 316.4 is amended by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b); and

■ c. Redesignating paragraph (c) as paragraph (b).

The revision reads as follows:

§ 316.4 Applications; documents.

(a) The applicant will apply for naturalization in accordance with instructions provided on the form prescribed by USCIS for that purpose.

* * * * *

■ 175. Section 316.5 is amended by adding paragraph (b)(6) to read as follows:

§ 316.5 Residence in the United States.

* * * * *

(b) * * *

(6) *Spouse of military personnel.* Pursuant to section 319(e) of the Act, any period of time the spouse of a United States citizen resides abroad will be treated as residence in any State or district of the United States for purposes of naturalization under section 316(a) or 319(a) of the Act if, during the period of time abroad, the applicant establishes that he or she was:

(i) The spouse of a member of the Armed Forces;

(ii) Authorized to accompany and reside abroad with that member of the Armed Forces pursuant to the member's official orders; and

(iii) Accompanying and residing abroad with that member of the Armed Forces in marital union in accordance with 8 CFR 319.1(b).

* * * * *

■ 176. Section 316.6 is added to read as follows:

§ 316.6 Physical presence for certain spouses of military personnel.

Pursuant to section 319(e) of the Act, any period of time the spouse of a United States citizen resides abroad will be treated as physical presence in any State or district of the United States for purposes of naturalization under section 316(a) or 319(a) of the Act if, during the period of time abroad, the applicant establishes that he or she was:

(a) The spouse of a member of the Armed Forces;

(b) Authorized to accompany and reside abroad with that member of the Armed Forces pursuant to the member's official orders; and

(c) Accompanying and residing abroad with that member of the Armed Forces in marital union in accordance with 8 CFR 319.1(b).

PART 319—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SPOUSES OF UNITED STATES CITIZENS

■ 177. The authority citation for part 319 continues to read as follows:

Authority: 8 U.S.C. 1103, 1430, 1443.

§ 319.1 [Amended]

■ 178. In § 319.1, paragraph (a)(5) is amended by removing the phrase ‘‘and in which the alien has filed the application’’

■ 179. Section 319.3 is amended by revising paragraph (a) to read as follows:

§ 319.3 Surviving spouse, child, or parent of a United States citizen who died during a period of honorable service in an active duty status in the Armed Forces of the United States.

(a) *Eligibility.* To be eligible for naturalization under section 319(d) of the Act, the surviving spouse, child, or parent of a United States citizen must:

(1) Establish that his or her citizen spouse, child, or parent died during a period of honorable service in an active duty status in the Armed Forces of the United States and, in the case of a surviving spouse, establish that he or she was living in marital union with the citizen spouse, in accordance with 8 CFR 319.1(b), at the time of the citizen spouse's death;

(2) At the time of examination on the application for naturalization, reside in the United States pursuant to a lawful admission for permanent residence;

(3) Be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(4) Comply with all other requirements for naturalization as provided in 8 CFR 316, except for those contained in 8 CFR 316.2(a)(3) through (6).

* * * * *

■ 180. Section 319.11 is amended by revising paragraph (a) introductory text to read as follows:

§ 319.11 Filing of application.

(a) *General.* An applicant under this part must submit an application for naturalization in accordance with the form instructions with the fee required by 8 CFR 103.7(b)(1). An alien spouse applying for naturalization under section 319(b) of the Act who is described in 8 CFR 319.2 must also submit a statement of intent containing the following information about the

citizen spouse's employment and future intent:

* * * * *

PART 320—CHILD BORN OUTSIDE THE UNITED STATES AND RESIDING PERMANENTLY IN THE UNITED STATES; REQUIREMENTS FOR AUTOMATIC ACQUISITION OF CITIZENSHIP

■ 181. The authority citation for part 320 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

■ 182. Section 320.3 is amended by:
■ a. Revising paragraph (a); and
■ b. Revising paragraph (b)(1) introductory text.

The revisions read as follows:

§ 320.3 How, where, and what forms and other documents should be filed?

(a) *Application.* Individuals who are applying for a certificate of citizenship on their own behalf should submit the request in accordance with the form instructions on the form prescribed by USCIS for that purpose. An application for a certificate of citizenship under this section on behalf of a child who has not reached the age of 18 years must be submitted by that child's U.S. citizen biological or adoptive parent(s), or legal guardian.

(b) *Evidence.* (1) An applicant under this section must establish eligibility as described in 8 CFR 320.2. An applicant must submit the following supporting evidence unless such evidence is already contained in USCIS administrative file(s):

* * * * *

■ 183. Section 320.5 is revised to read as follows:

§ 320.5 Decision.

(a) *Approval of application.* If the application for the certificate of citizenship is approved, after the applicant takes the oath of allegiance prescribed in 8 CFR 337.1 (unless the oath is waived), USCIS will issue a certificate of citizenship.

(b) *Denial of application.* If the decision of USCIS is to deny the application for a certificate of citizenship under this section, the applicant will be advised in writing of the reasons for denial and of the right to appeal in accordance with 8 CFR 103.3(a). An applicant may file an appeal within 30 days of service of the decision in accordance with the instructions on the form prescribed by USCIS for that purpose, and with the fee required by 8 CFR 103.7(b)(1).

(c) *Subsequent application.* After an application for a certificate of citizenship has been denied and the time for appeal has expired, USCIS will reject a subsequent application submitted by the same individual and the applicant will be instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion must be accompanied by the rejected application and the fee specified in 8 CFR 103.7(b)(1).

PART 322—CHILD BORN OUTSIDE THE UNITED STATES; REQUIREMENTS FOR APPLICATION FOR CERTIFICATE OF CITIZENSHIP

■ 184. The authority citation for part 322 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 322.1 [Amended]

■ 185. Section 322.1 is amended, in the definition of ''adopted child'' by revising ''section 101(b)(1)(E) or (F)'' to read ''section 101(b)(1)(E), (F) or (G)''.

■ 186. Section 322.2 is amended by:
■ a. Revising the section heading; and by
■ b. Adding paragraph (c) to read as follows:

§ 322.2 Eligibility.

* * * * *

(c) *Exceptions for children of military personnel.* Pursuant to section 322(d) of the Act, a child of a member of the Armed Forces of the United States residing abroad is exempt from the temporary physical presence, lawful admission, and maintenance of lawful status requirements under 8 CFR 322.2(a)(5), if the child:

(1) Is authorized to accompany and reside abroad with the member of the Armed Forces pursuant to the member's official orders; and

(2) Is accompanying and residing abroad with the member of the Armed Forces.

■ 187. Section 322.3 is amended by:
■ a. Revising the section heading;
■ b. Revising paragraph (a);
■ c. Revising paragraph (b)(1)(viii);
■ d. Revising paragraph (b)(1)(xi);
■ e. Revising paragraph (b)(1)(xii);
■ f. Revising paragraph (b)(1)(xiii); and
■ g. Revising paragraph (b)(2), the first sentence.

The revisions read as follows:

§ 322.3 Application and supporting documents.

(a) *Application.* A U.S. citizen parent of an alien child (including an adopted child) may file an application for the child to become a citizen and obtain a certificate of citizenship under section 322 of the Act by submitting an application on the form prescribed by USCIS in accordance with the form instructions and with the fee prescribed by 8 CFR 103.7(b)(1). If the U.S. citizen parent has died, the child's U.S. citizen grandparent or U.S. citizen legal guardian may submit the application, provided the application is filed not more than 5 years after the death of the U.S. citizen parent.

(b) * * *

(1) * * *

(viii) Evidence that the child is present in the United States pursuant to a lawful admission and is maintaining such lawful status, or evidence establishing that the child qualifies for an exception to these requirements as provided in 8 CFR 322.2(c) pursuant to section 322(d) of the Act. Such evidence may be presented at the time of interview when appropriate;

* * * * *

(xi) For adopted orphans applying under section 322 of the Act, a copy of notice of approval of the orphan petition and supporting documentation for such petition (except the home study) or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IR–3 (Orphan adopted abroad by a U.S. citizen) or IR–4 (Orphan to be adopted by a U.S. citizen);

(xii) For a Hague Convention adoptee applying under section 322 of the Act, a copy of the notice of approval of the Convention adoptee petition and its supporting documentation, or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IH–3 (Hague Convention Orphan adopted abroad by a U.S. citizen) or IH–4 (Hague Convention Orphan to be adopted by a U.S. citizen); and

(xiii) Evidence of all legal name changes, if applicable, for the child, U.S. citizen parent, U.S. citizen grandparent, or U.S. citizen legal guardian.

(2) If USCIS requires any additional documentation to make a decision on the application, the parents may be asked to provide that documentation under separate cover or at the time of interview. * * *

■ 188. Section 322.4 is revised to read as follows:

§ 322.4 Interview.

The U.S. citizen parent and the child must appear in person before a USCIS officer for examination on the application under this section. If the U.S. citizen parent is deceased, the

child's U.S. citizen grandparent or U.S. citizen legal guardian who filed the application on the child's behalf must appear.

■ 189. Section 322.5 is revised to read as follows:

§ 322.5 Decision.

(a) *Approval of application.* If the application for certificate of citizenship is approved, after the applicant takes the oath of allegiance prescribed in 8 CFR 337.1 (unless the oath is waived), USCIS will issue a certificate of citizenship. The child is a citizen as of the date of approval and administration of the oath of allegiance.

(b) *Denial of application.* If the USCIS decision is to deny the application for a certificate of citizenship under this section, the applicant will be furnished with the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). An applicant may file an appeal within 30 days of service of the decision in accordance with the instructions on the form prescribed by USCIS for that purpose, and with the fee required by 8 CFR 103.7(b)(1).

(c) *Subsequent application.* After an application for a certificate of citizenship has been denied and the time for appeal has expired, USCIS will reject a subsequent application submitted by the same individual and the applicant will be instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion must be accompanied by the rejected application and the fee specified in 8 CFR 103.7(b)(1).

PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE AND FORMER CITIZENS WHOSE NATURALIZATION IS AUTHORIZED BY PRIVATE LAW

■ 190. The authority citation for part 324 continues to read as follows:

Authority: 8 U.S.C. 1103, 1435, 1443, 1448, 1101 note.

§ 324.2 [Amended]

■ 191. In § 324.2, paragraph (b) is amended by revising the term ''N–400, as required by § 316.4 of this chapter'' to read ''the form designated by USCIS in accordance with the form instructions and with the fee prescribed in 8 CFR 103.7(b)(1) as required by 8 CFR 316.4''.

§ 324.3 [Amended]

■ 192. In § 324.3, paragraph (b)(1) is amended by revising the phrase ''an Application for Naturalization, form N–400, to USCIS'' to read ''an application for naturalization on the form prescribed by USCIS''.

■ 193. Section 324.5 is revised to read as follows:

§ 324.5 Former citizen of the United States whose naturalization by taking the oath is authorized by a private law.

A former citizen of the United States whose naturalization by taking the oath before any naturalization court or office of USCIS within the United States is authorized by a private law must submit an application on the form specified by USCIS, without fee, in accordance with the form instructions.

PART 325—NATIONALS BUT NOT CITIZENS OF THE UNITED STATES; RESIDENCE WITHIN OUTLYING POSSESSIONS

■ 194. The authority citation for part 325 continues to read as follows:

Authority: 8 U.S.C. 1103, 1436, 1443.

§ 325.4 [Amended]

■ 195. In § 325.4, paragraph (b)(3) is amended by revising the term ''Service district in the United States where the application is filed'' to read ''Service district, as defined in 8 CFR 316.1,''.

PART 328—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH 1 YEAR OF SERVICE IN THE UNITED STATES ARMED FORCES

■ 196. The authority citation for part 328 continues to read as follows:

Authority: 8 U.S.C. 1103, 1439, 1443.

■ 197. Section 328.4 is revised to read as follows:

§ 328.4 Application and evidence.

(a) *Application.* An applicant for naturalization under section 328 of the Act must submit an application on the form prescribed by USCIS in accordance with the form instructions and as provided in 8 CFR 316.4.

(b) *Evidence.* The applicant's eligibility for naturalization under 8 CFR 328.2(a) or (b) will be established only by the certification of honorable service by the executive department under which the applicant served or is serving.

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH ACTIVE DUTY OR CERTAIN READY RESERVE SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

■ 198. The authority citation for part 329 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443; 8 CFR part 2.

■ 199. Revise § 329.4 to read as follows:

§ 329.4 Application and evidence.

(a) *Application.* An applicant for naturalization under section 329 of the Act must submit an application on the form prescribed by USCIS in accordance with the form instructions and as provided in 8 CFR 316.4.

(b) *Evidence.* The applicant's eligibility for naturalization under 8 CFR 329.2(a), (b), or (c)(2) will be established only by a certification of honorable service by the executive department under which the applicant served or is serving.

§ 329.5 [Removed]

■ 200. Section 329.5 is removed.

PART 330—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SEAMEN

■ 201. The authority citation for part 330 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

§ 330.2 [Amended]

■ 202. In § 330.2, paragraph (a) is amended by revising the phrase ''Application for Naturalization, Form N–400.'' to read ''application on the form designated by USCIS.''.

PART 332—NATURALIZATION ADMINISTRATION

■ 203. The authority citation for part 332 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1447.

■ 204. Section 332.1 is revised to read as follows:

§ 332.1 Designation of USCIS employees to administer oaths and conduct examinations and hearings.

(a) *Examinations.* All USCIS officers are hereby designated to conduct the examination for naturalization required under section 335 of the Act, provided that each officer so designated has received appropriate training.

(b) *Hearings.* Section 336 of the Act authorizes USCIS officers who are designated under paragraph (a) of this

section to conduct hearings under that section.

(c) *Depositions.* All USCIS officers who are designated under paragraph (a) of this section are hereby designated to take depositions in matters relating to the administration of naturalization and citizenship laws.

(d) *Oaths and affirmations.* All USCIS officers who are designated under paragraph (a) of this section are hereby designated to administer oaths or affirmations except for the oath of allegiance as provided in 8 CFR 337.2.

§§ 332.2, 332.3, and 332.4 [Removed and Reserved]

■ 205. Sections 332.2, 332.3, and 332.4 are removed and reserved.

PART 333—PHOTOGRAPHS

■ 206. The authority citation for part 333 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

■ 207. In § 333.1, paragraph (a) is revised to read as follows:

§ 333.1 Description of required photographs.

(a) Every applicant who is required to provide photographs under section 333 of the Act must do so as prescribed by USCIS in its form instructions.

* * * * *

■ 208. Section 333.2 is revised to read as follows:

§ 333.2 Attachment of photographs to documents.

A photograph of the applicant must be securely and permanently attached to each certificate of naturalization or citizenship, or to any other document that requires a photograph, in a manner prescribed by USCIS.

PART 334—APPLICATION FOR NATURALIZATION

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

Authority: 8 U.S.C. 1103, 1443.

■ 210. In § 334.2, paragraph (a) is revised to read as follows:

§ 334.2 Application for naturalization.

(a) An applicant may file an application for naturalization with required initial evidence in accordance with the general form instructions for naturalization. The applicant must include the fee as required in 8 CFR 103.7(b)(1).

* * * * *

■ 211. Section 334.11 is amended by:

■ a. Revising the term ''Form N–300'' to read ''the form specified by USCIS, in accordance with the form instructions'' in paragraph (a); and by

■ b. Revising paragraph (b).

The revision reads as follows:

§ 334.11 Declaration of intention.

* * * * *

(b) *Approval.* If approved, USCIS will retain the application in the file and advise the applicant of the action taken.

* * * * *

§§ 334.16–334.18 [Removed]

■ 212. Sections 334.16 through 334.18 are removed.

PART 335—EXAMINATION ON APPLICATION FOR NATURALIZATION

■ 213. The authority citation for part 335 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1447.

■ 214. Section 335.2 is amended by:

■ a. Revising the term ''Service'' to read ''USCIS'' and the term ''§ 332.1 of this chapter'' to read ''8 CFR 332.1'' in paragraph (a);

■ b. Revising the terms ''The Service'' and ''Service'' to read ''USCIS'' wherever that term appears in paragraph (b) introductory text;

■ c. Revising paragraph (b)(3);

■ d. Revising the terms ''the Service officer'', ''The Service officer'' and ''the Service'' to read ''USCIS'' wherever the terms appear in paragraph (c);

■ e. Revising paragraph (d)(2);

■ f. Revising the term ''Service'' to read ''USCIS'' wherever the term appears in paragraph (e); and

■ g. Revising the term ''Service'' to read ''USCIS'' and the term ''§ 312.4 of this chapter'' to read ''8 CFR 312.4'' wherever the terms appear in paragraph (f).

The revisions read as follows:

§ 335.2 Examination of applicant.

* * * * *

(b) * * *

(3) Confirmation from the Federal Bureau of Investigation that the fingerprint data submitted for the criminal background check has been rejected.

* * * * *

(d) * * *

(2) *Service of subpoenas.* Subpoenas will be issued on the form designated by USCIS and a record will be made of service. The subpoena may be served by any person over 18 years of age, not a party to the case, designated to make such service by USCIS.

* * * * *

§ 335.3 [Amended]

■ 215. Section 335.3 is amended by revising the terms ''The Service officer'' and ''the Service officer'' to read ''USCIS'' wherever the terms appear in the following places:

■ a. Paragraph (a); and

■ b. Paragraph (b).

§ 335.4 [Amended]

■ 216. Section 335.4 is amended by revising the phrase ''the Service officer designated in § 332.1 of this chapter'' to read ''the USCIS officer described in 8 CFR 332.1''.

§ 335.5 [Amended]

■ 217. Section 335.5 is amended by revising the terms ''the Service'' and ''The Service'' to read ''USCIS'' wherever the terms appear.

■ 218. Section 335.6 is amended by revising the term ''the Service'' to read ''USCIS'' wherever the term appears in the following places:

■ a. Paragraph (a);

■ b. Paragraph (b); and

■ c. Paragraph (c).

■ 219. Section 335.7 is revised to read as follows:

§ 335.7 Failure to prosecute application after initial examination.

An applicant for naturalization who has appeared for the examination on his or her application as provided in 8 CFR 335.2 will be considered as failing to prosecute such application if he or she, without good cause being shown, either failed to excuse an absence from a subsequently required appearance, or fails to provide within a reasonable period of time such documents, information, or testimony deemed by USCIS to be necessary to establish his or her eligibility for naturalization. USCIS will deliver notice of requests for appearance or evidence as provided in 8 CFR 103.8. In the event that the applicant fails to respond within 30 days of the date of notification, USCIS will adjudicate the application on the merits pursuant to 8 CFR 336.1.

§ 335.9 [Amended]

■ 220. Section 335.9 is amended by:

■ a. Revising the phrase ''Service office to the Service office'' to read ''USCIS office to the USCIS office'' in paragraph (a); and

■ b. Revising the term ''district director'' to read ''USCIS'' and the term 'the Service's'' to read ''USCIS''' in paragraph (b).

§ 335.10 [Amended]

■ 221. Section 335.10 is amended by revising the terms ''the Service'' and ''the district director'' to read ''USCIS'' wherever the terms appear.

§§ 335.11 through 335.13 [Removed]

■ 222. Sections 335.11 through 335.13 are removed.

PART 336—HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION

■ 223. The authority citation for section 336 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1447, 1448.

§ 336.1 [Amended]

■ 224. Section 336.1 is amended by:
■ a. Revising the phrase ''the Service shall'' to read ''USCIS will'' in the first sentence in paragraph (a); and
■ b. Revising the phrase ''may be made in person or by certified mail to the applicant's last known address'' to read ''must be by personal service as described in 8 CFR 103.8'' in paragraph (c).

■ 225. Section 336.2 is revised to read as follows:

§ 336.2 USCIS hearing.

(a) The applicant, or his or her authorized representative, may request a hearing on the denial of the applicant's application for naturalization by filing a request with USCIS within thirty days after the applicant receives the notice of denial.

(b) Upon receipt of a timely request for a hearing, USCIS will schedule a review hearing, within a reasonable period of time not to exceed 180 days from the date upon which the appeal is filed. The review will be with an officer other than the officer who conducted the original examination or who rendered determination upon which the hearing is based, and who is classified at a grade level equal to or higher than the grade of the examining officer. The reviewing officer will have the authority and discretion to review the application for naturalization, to examine the applicant, and either to affirm the findings and determination of the original examining officer or to re-determine the original decision in whole or in part. The reviewing officer will also have the discretion to review any administrative record which was created as part of the examination procedures as well USCIS files and reports. He or she may receive new evidence or take such additional testimony as may be deemed relevant to the applicant's eligibility for naturalization or which the applicant seeks to provide. Based upon the complexity of the issues to be reviewed or determined, and upon the necessity of conducting further examinations with respect to essential naturalization requirements, such as literacy or civics knowledge, the reviewing immigration officer may, in his or her discretion, conduct a full *de novo* hearing or may utilize a less formal review procedure, as he or she deems reasonable and in the interest of justice.

(c) *Improperly filed request for hearing.* (1) *Request for hearing filed by a person or entity not entitled to file.* (i) *Rejection without refund of filing fee.* A request for hearing filed by a person or entity who is not entitled to file such a request must be rejected as improperly filed. In such a case, any filing fee will not be refunded.

(ii) *Request for hearing by attorney or representative without proper Form G–28.* If a request for hearing is filed by an attorney or representative who has not properly filed a notice of entry of appearance as attorney or representative entitling that person to file the request for hearing, the appeal will be considered as improperly filed. In such a case, any filing fee will not be refunded regardless of the action taken. The reviewing official will ask the attorney or representative to submit a proper notice of entry within 15 days of the request. If such notice is not submitted within the time allowed, the official may, on his or her own motion, under 8 CFR 103.5(a)(5)(i), make a new decision favorable to the affected party without notifying the attorney or representative. The request for hearing may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed notice entitling that person to file the request for hearing.

(2) *Untimely request for hearing.* (i) *Rejection without refund of filing fee.* A request for hearing which is not filed within the time period allowed must be rejected as improperly filed. In such a case, any filing fee will not be refunded.

(ii) *Untimely request for hearing treated as motion.* If an untimely request for hearing meets the requirements of a motion to reopen as described in 8 CFR 103.5(a)(2) or a motion to reconsider as described in 8 CFR 103.5(a)(3), the request for hearing must be treated as a motion and a decision must be made on the merits of the case.

■ 226. Section 336.9 is amended by:
■ a. Revising the term ''the Service'' to read ''USCIS'' in paragraph (a);
■ b. Revising paragraph (b); and
■ c. Revising the term ''Service'' to read ''USCIS'' in paragraph (d).

The revision reads as follows:

* * * * *

(b) *Filing a petition.* Under these procedures, an applicant must file a petition for review in the United States District Court having jurisdiction over his or her place of residence, in accordance with Chapter 7 of Title 5, United States Code, within a period of not more than 120 days after the USCIS final determination. The petition for review must be brought against USCIS, and service of the petition for review must be made upon DHS and upon the USCIS office where the hearing was held pursuant to 8 CFR 336.2.

* * * * *

PART 337—OATH OF ALLEGIANCE

■ 227. The authority citation for part 337 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1448; 8 CFR Part 2.

■ 228. Section 337.2 is revised to read as follows:

§ 337.2 Oath administered by USCIS or EOIR.

(a) *Public ceremony.* An applicant for naturalization who has elected to have his or her oath of allegiance administered by USCIS or an immigration judge and is not subject to the exclusive oath administration authority of an eligible court pursuant to section 310(b) of the Act must appear in person in a public ceremony, unless such appearance is specifically excused under the terms and conditions set forth in this part. Such ceremony will be held at a time and place designated by USCIS or EOIR within the United States (or abroad as permitted for certain applicants in accordance with 8 U.S.C. 1443a) and within the jurisdiction where the application for naturalization was filed, or into which the application for naturalization was transferred pursuant to 8 CFR 335.9. Naturalization ceremonies will be conducted at regular intervals as frequently as necessary to ensure timely naturalization, but in all events at least once monthly where it is required to minimize unreasonable delays. Naturalization ceremonies will be presented in such a manner as to preserve the dignity and significance of the occasion.

(b) *Authority to administer oath of allegiance.* The Secretary may delegate authority to administer the oath of allegiance prescribed in section 337 of the Act to such officials of DHS and to immigration judges or officials designated by the Attorney General as may be necessary for the efficient administration of the naturalization program.

(c) *Execution of questionnaire.* Immediately prior to being administered the oath of allegiance, each applicant must complete the questionnaire on the

form designated by USCIS. USCIS will review each completed questionnaire and may further question the applicant regarding the responses provided. If derogatory information is revealed, USCIS will remove the applicant's name from the list of eligible persons as provided in 8 CFR 335.5 and he or she will not be administered the oath.

§ 337.3 [Amended]

■ 229. Section 337.3 is amended by revising the terms ''the Service'' and ''the district director'' to read ''USCIS'' whenever the terms appear in the following places:
■ a. Paragraph (a) introductory text;
■ b. Paragraph (a)(4);
■ c. Paragraph (b); and
■ d. Paragraph (c).

§ 337.7 [Amended]

■ 230. Section 337.7 is amended by revising the terms ''the Service'' and ''Service'' to read ''USCIS'' whenever the terms appear in the following places:
■ a. Paragraph (a); and
■ b. Paragraph (b).

■ 231. Section 337.8 is revised to read as follows:

§ 337.8 Oath administered by the courts.

(a) *Notification of election.* An applicant for naturalization not subject to the exclusive jurisdiction of 8 CFR 310.2(d) must notify USCIS at the time of the filing of, or no later than at the examination on, the application of his or her election to have the oath of allegiance administered in an appropriate court having jurisdiction over the applicant's place of residence.

(b) *Certificate of eligibility.* (1) *Exclusive jurisdiction.* In those instances falling within the exclusive jurisdiction provision of section 310(b)(1)(B) of the Act, USCIS will notify the court of the applicant's eligibility for admission to United States citizenship by notifying the clerk of the court within 10 days of the approval of the application.

(2) *Non-exclusive jurisdiction.* In those instances in which the applicant has elected to have the oath administered in a court ceremony, USCIS will notify the clerk of the court in writing that the applicant has been determined by the USCIS to be eligible for admission to United States citizenship upon taking the requisite oath of allegiance and renunciation in a public ceremony. If a scheduled hearing date is not available at the time of notification, USCIS will notify the applicant in writing that the applicant has been approved but no ceremony date is yet available.

(c) *Preparation of lists.* (1) At or prior to the oath administration ceremony, the representative attending the ceremony will submit to the court, in duplicate, lists of persons to be administered the oath of allegiance and renunciation. After the ceremony, and after any required amendments and notations have been made to the lists, the clerk of the court will sign the lists.

(2) The originals of all court lists specified in this section will be filed permanently in the court, and the duplicates returned by the clerk of the court to USCIS. The same disposition will be made of any list presented to, but not approved by, the court.

(d) *Personal representation of the government at oath administration ceremonies.* An oath administration ceremony must be attended by a representative of USCIS who will review each completed questionnaire and may further question the applicant regarding the responses provided. If derogatory information is revealed, the USCIS representative will remove the applicant's name from the list of eligible persons as provided in 8 CFR 335.5 and the court will not administer the oath to such applicant.

(e) *Written report in lieu of personal representation.* If it is impractical for a USCIS representative to be present at a judicial oath administration ceremony, written notice of that fact will be given by the USCIS to the court. The list of persons to be administered the oath of allegiance and renunciation, forms, memoranda, and certificates will be transmitted to the clerk of the court, who will submit the appropriate lists to the court.

(f) *Withdrawal from court.* An applicant for naturalization not subject to the exclusive jurisdiction of 8 CFR 310.3(d) who has elected to have the oath administered in a court oath ceremony may, for good cause shown, request that his or her name be removed from the list of persons eligible to be administered the oath at a court oath ceremony and request that the oath be administered by an immigration judge or USCIS. Such request must be in writing to the USCIS office which granted the application and must cite the reasons for the request. USCIS will consider the good cause shown and the best interests of the applicant in making a decision. If it is determined that the applicant will be permitted to withdraw his or her name from the court ceremony, USCIS will give written notice to the court of the applicant's withdrawal, and the applicant will be scheduled for the next available oath ceremony, conducted by an Immigration Judge or USCIS, as if he or she had never elected the court ceremony.

§ 337.9 [Amended]

■ 232. In § 337.9, paragraph (a) is amended by removing the phrase '', administered either by the Service or an immigration judge''.

PART 338—CERTIFICATE OF NATURALIZATION

■ 233. The authority citation for part 338 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

■ 234. Section 338.1 is revised to read as follows:

§ 338.1 Execution and issuance of certificate.

(a) *Issuance.* When an applicant for naturalization has taken and subscribed to the oath of allegiance in accordance with 8 CFR part 337, USCIS will issue a Certificate of Naturalization at the conclusion of the oath administration ceremony.

(b) *Contents of certificate.* The certificate must be issued to the applicant in accordance with section 338 of the Act in his or her true, full, and correct name as it exists at the time of the administration of the oath of allegiance. The certificate must show, under ''country of former nationality,'' the name of the applicant's last country of citizenship, as shown in the application and USCIS records, even though the applicant may be stateless at the time of admission to citizenship.

§ 338.3 [Amended]

■ 235. Section 338.3 is amended by revising the terms ''the Service'' and the term ''the district director'' to read ''USCIS''.

■ 236. Section 338.5 is revised to read as follows:

§ 338.5 Correction of certificates.

(a) *Application.* Whenever a Certificate of Naturalization has been delivered which does not conform to the facts shown on the application for naturalization, or a clerical error was made in preparing the certificate, an application for issuance of a corrected certificate may be filed, without fee, in accordance with the form instructions.

(b) *Court-issued certificates.* If the certificate was originally issued by a clerk of court under a prior statute and USCIS finds that a correction is justified and can be made without mutilating the certificate, USCIS will authorize the issuing court to make the necessary correction and to place a dated endorsement of the court on the reverse

of the certificate explaining the correction. The authorization will be filed with the naturalization record of the court, the corrected certificate will be returned to the naturalized person, and the duplicate will be endorsed to show the date and nature of the correction and endorsement made, and then returned to USCIS. No fee will be charged the naturalized person for the correction.

(c) *USCIS-issued certificates.* If the certificate was originally issued by USCIS (or its predecessor agency), and USCIS finds that a correction was justified, the correction shall be made to the certificate and a dated endorsement made on the reverse of the certificate.

(d) *Administrative actions.* When a correction made pursuant to paragraphs (b) or (c) of this section would or does result in mutilation of a certificate, USCIS will issue a replacement Certificate of Naturalization and destroy the surrendered certificate.

(e) *Data change.* The correction will not be deemed to be justified where the naturalized person later alleges that the name or date of birth which the applicant stated to be his or her correct name or date of birth at the time of naturalization was not in fact his or her name or date of birth at the time of the naturalization.

§§ 338.11 through 338.13 [Removed and Reserved]

■ 237. Sections 338.11 through 338.13 are removed and reserved.

PART 339—FUNCTIONS AND DUTIES OF CLERKS OF COURT REGARDING NATURALIZATION PROCEEDINGS

■ 238. The authority citation for part 339 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1448.

§ 339.1 [Amended]

■ 239. Section 339.1 is amended by revising the phrase ''the Service pursuant to § 338.1 of this chapter'' to read ''USCIS in accordance with 8 CFR 338.1''.

■ 240. Section 339.2 is revised to read as follows:

§ 339.2 Monthly reports.

(a) *Oath administration ceremonies.* Clerks of court will on the first day of each month or immediately following each oath ceremony submit to USCIS a report listing all oath administration ceremonies held and the total number of persons issued the oath at each ceremony, in accordance with USCIS instructions. The report will include a list of persons attending naturalization oath ceremonies during the month, and certified copies of any court orders granting changes of name.

(b) *Petitions filed for de novo hearings.* The clerk of court must submit to USCIS a monthly report of all persons who have filed *de novo* review petitions before the court. The report shall include each petitioner's name, alien registration number, date of filing of the petition for a *de novo* review, and, once an order has been entered, the disposition.

(c) *Other proceedings and orders.* The clerk of court must forward to USCIS copies of the records of such other proceedings and other orders instituted on or issued by the court affecting or relating to the naturalization of any person as may be required from time to time.

(d) *Use of reports for accounting purposes.* State and federal courts may use the reports as a monthly billing document, submitted to USCIS for reimbursement in accordance with section 344(f)(1) of the Act. USCIS will use the information submitted to calculate costs incurred by courts in performing their naturalization functions. State and federal courts will be reimbursed pursuant to terms set forth in annual agreements entered into between DHS and the Administrative Office of United States Courts.

PART 340—REVOCATION OF NATURALIZATION

■ 241. The authority citation for part 340 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

§ 340.1 [Removed and reserved]

■ 242. Section 340.1 is removed and reserved.

■ 243. Section 340.2 is revised to read as follows:

§ 340.2 Revocation proceedings pursuant to section 340(a) of the Act.

(a) *Recommendations for institution of revocation proceedings.* Whenever it appears that any grant of naturalization may have been illegally procured or procured by concealment of a material fact or by willful misrepresentation, and a prima facie case exists for revocation pursuant to section 340(a) of the Act, USCIS will make a recommendation regarding revocation.

(b) *Recommendation for criminal prosecution.* If it appears to USCIS that a case described in paragraph (a) of this section is amenable to criminal penalties under 18 U.S.C. 1425 for unlawful procurement of citizenship or naturalization, the facts will be reported to the appropriate United States Attorney for possible criminal prosecution.

PART 341—CERTIFICATES OF CITIZENSHIP

■ 244. The authority citation for part 341 continues to read as follows:

Authority: Pub. L. 82–414, 66 Stat. 173, 238, 254, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455; 8 CFR part 2.

■ 245. Section 341.1 is revised to read as follows:

§ 341.1 Application.

An application for a certificate of citizenship by or in behalf of a person who claims to have acquired United States citizenship under section 309(c) of the Act or to have acquired or derived United States citizenship as specified in section 341 of the Act must be submitted on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the instructions on the form.

■ 246. Section 341.2 is amended by:

■ a. Revising paragraph (a)(1) introductory text;

■ b. Revising the phrase ''at the district director's option'' to read ''at the discretion of USCIS'' in paragraph (b)(1);

■ c. Revising the phrase ''A district director shall assign an officer of the Service to'' to read ''USCIS will'' in the first sentence in paragraph (d);

■ d. Removing the phrase ''to the district director'' in the last sentence in paragraph (d); and

■ e. Removing paragraph (g).

The revision reads as follows:

§ 341.2 Examination upon application.

(a) * * *

(1) *When testimony may be omitted.* An application may be processed without interview if the USCIS officer adjudicating the case has in the administrative file(s) all the required documentation necessary to establish the applicant's eligibility for U.S. citizenship, or if the application is accompanied by one of the following:

* * * * *

§ 341.3 [Amended]

■ 247. Section 341.3 is amended by revising the phrase ''an officer of the Service or a United States consular official'' to read ''a DHS or Department of State official''.

■ 248. Section 341.5 is revised to read as follows:

§ 341.5 Decision.

(a) *Adjudication.* USCIS may adjudicate the application only after the

appropriate approving official has reviewed the report, findings, recommendation, and endorsement of the USCIS officer assigned to adjudicate the application.

(b) *Approval.* If the application is granted, USCIS will prepare a certificate of citizenship and, unless the claimant is unable by reason of mental incapacity or young age to understand the meaning of the oath, he or she must take and subscribe to the oath of renunciation and allegiance prescribed by 8 CFR 337 before USCIS within the United States. Except as provided in paragraph (c), delivery of the certificate in accordance with 8 CFR 103.2(b)(19) and 8 CFR 103.8 must be made in the United States to the claimant or the acting parent or guardian.

(c) *Approval pursuant to section 322(d) of the Act.* Persons eligible for naturalization pursuant to section 322(d) of the Act may subscribe to the oath of renunciation and allegiance and may be issued a certificate of citizenship outside of the United States, in accordance with 8 U.S.C. 1443a.

(d) *Denial.* If USCIS denies the application, the applicant will be furnished the reasons for denial and advised of the right to appeal in accordance with 8 CFR 103.3.

(e) *Subsequent application.* After an application for a certificate of citizenship has been denied and the time for appeal has expired, USCIS will reject a subsequent application submitted by the same individual and the applicant will be instructed to submit a motion to reopen or reconsider in accordance with 8 CFR 103.5. The motion must be accompanied by the rejected application and the fee specified in 8 CFR 103.7.

§§ 341.6 and 341.7 [Removed]

■ 249. Sections 341.6 and 341.7 are removed.

PART 342—ADMINISTRATIVE CANCELLATION OF CERTIFICATES, DOCUMENTS OR RECORDS

■ 250. The authority citation for part 342 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1453.

■ 251. Section 342.2 is revised to read as follows:

§ 342.2 Service of notice.

The notice required by 8 CFR 342.1 must be by personal service as described in 8 CFR 103.8(a)(2).

PART 343—CERTIFICATE OF NATURALIZATION OR REPATRIATION; PERSONS WHO RESUMED CITIZENSHIP UNDER SECTION 323 OF THE NATIONALITY ACT OF 1940, AS AMENDED, OR SECTION 4 OF THE ACT OF JUNE 29, 1906

■ 252. The authority citation for part 343 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1443, 1454, and 1455.

§ 343.1 [Amended]

■ 253. Section 343.1 is amended in the first sentence by revising the term ''therefor on Form N–580'' to read: ''in accordance with USCIS instructions''.

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

■ 254. The authority citation for part 343a is revised to read as follows:

Authority: 8 U.S.C. 1101 note, 1103, 1435, 1443, 1454, and 1455.

■ 255. Section 343a.1 is amended by:
■ a. Revising the phrase ''shall apply on Form N–565 for a new paper in lieu thereof'' to read ''must apply on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions'' in paragraph (a);
■ b. Revising the phrase ''shall apply on Form N–565'' to read ''must apply'' in paragraph (b); and
■ c. Revising paragraph (c).

The revision reads as follows:

§ 343a.1 Application for replacement of or new papers relating to naturalization, citizenship, or repatriation.

* * * * *

(c) *Adjudication and disposition.* (1) *Interview.* The applicant shall only be required to appear in person for interview under oath or affirmation in specific cases. Those cases which necessitate an interview enabling an officer to properly adjudicate the application at the office having jurisdiction will be determined by USCIS.

(2) *Approval.* If an application for a new certificate of naturalization, citizenship, or repatriation or a new declaration of intention is approved, the new certificate or declaration will be issued and delivered by personal service in accordance with 8 CFR 103.8(a)(2). If an application for a new certified copy of the proceedings under the Act of June 25, 1936, as amended, or under section 317(b) of the Nationality Act of 1940, or under section 324(c) of the Immigration and Nationality Act, or under the provisions of any private law is approved, a certified photocopy of the record of the proceedings will be issued. If, subsequent to naturalization or repatriation, the applicant's name was changed by marriage, the certification of the photocopy will show both the name in which the proceedings were conducted and the changed name. The new certified copy will be delivered to the applicant in accordance with 8 CFR 103.8(a)(2).

(3) *Denial.* If the application is denied, the applicant shall be notified of the reasons for the denial and of the right to appeal in accordance with 8 CFR 103.3.

§ 343a.2 [Amended]

■ 256. Section 343a.2 is amended by revising the terms ''Service'' and ''the Service'' to read ''USCIS'' and the term ''Form N–565'' to read ''an application'' wherever those terms appear.

PART 343b—SPECIAL CERTIFICATE OF NATURALIZATION FOR RECOGNITION BY A FOREIGN STATE

■ 257. The authority citation for part 343b continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1454, 1455.

§ 343b.1 [Amended]

■ 258. Section 343b.1 is amended by revising the term ''Form N–565'' to read ''the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions''.

■ 259. Section 343b.3 is revised to read as follows:

§ 343b.3 Interview.

When the application presents a prima facie case, USCIS may issue a certificate without first interviewing the applicant. In all other cases, the applicant must be interviewed. The interviewing officer must provide a complete written report of the interview before forwarding the application for issuance of the certificate.

■ 260. Section 343b.4 is revised to read as follows:

§ 343b.4 Applicant outside of United States.

If the application is received by a DHS office outside the United States, an officer will, when practicable, interview the applicant before the application is forwarded to USCIS for issuance of the certificate. When an interview is not practicable, or is not conducted because the application is submitted directly to USCIS in the United States, the

certificate may nevertheless be issued and the recommendation conditioned upon satisfactory interview by the Department of State. When forwarding the certificate in such a case, USCIS will inform the Secretary of State that the applicant has not been interviewed, and request to have the applicant interviewed regarding identity and possible expatriation. If identity is not established or if expatriation has occurred, the Department of State will return the certificate to USCIS for disposition.

■ 261. Section 343b.11 is revised to read as follows:

§ 343b.11 Disposition of application.

(a) *Approval.* If the application is granted, USCIS will prepare a special certificate of naturalization and forward it to the Secretary of State for transmission to the proper authority of the foreign state in accordance with procedures agreed to between DHS and the Department of State, retain the application and a record of the disposition in the DHS file, and notify the applicant of the actions taken.

(b) *Denial.* If the application is denied, the applicant will be notified of the reasons for denial and of the right to appeal in accordance with 8 CFR 103.3.

PART 343c—CERTIFICATIONS FROM RECORDS

■ 262. The authority citation for part 343c is revised to read as follows:

Authority: 5 U.S.C. 552; 8 U.S.C. 1103.

§ 343c.1 [Amended]

■ 263. Section 343c.1 is amended by revising the term ''Form G–641'' to read ''the form designated by USCIS in accordance with the form instructions''.

PART 392—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO DIE WHILE SERVING ON ACTIVE DUTY WITH THE UNITED STATES ARMED FORCES DURING CERTAIN PERIODS OF HOSTILITIES

■ 264. The authority citation for part 392 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440 and note, and 1440–1; 8 CFR part 2.

■ 265. In § 392.2, paragraph (d)(2) is revised to read as follows:

§ 392.2 Eligibility for posthumous citizenship.

* * * * *

(d) * * *

(2) The certification required by section 329A(c)(2) of the Act to prove military service and service-connected death must be requested by the applicant on the form designated by USCIS in accordance with the form instructions. The form will also be used to verify the decedent's place of induction, enlistment, or reenlistment.

■ 266. Section 392.3 is amended by:

■ a. Revising the term ''the Service'' to read ''USCIS'' in the last sentence in paragraph (a)(2);

■ b. Revising paragraph (b); and

■ c. Revising paragraph (c).

The revisions read as follows:

§ 392.3 Application for posthumous citizenship.

* * * * *

(b) *Application.* An application for posthumous citizenship must be submitted on the form designated by USCIS in accordance with the form instructions.

(c) *Application period.* An application for posthumous citizenship must be filed no later than two years after the date of the decedent's death.

* * * * *

■ 267. In § 392.4, paragraphs (a) and (e) are revised to read as follows:

§ 392.4 Issuance of a certificate of citizenship.

(a) *Approval of application.* When an application for posthumous citizenship under this part has been approved, USCIS will issue a Certificate of Citizenship to the applicant in the name of the decedent.

* * * * *

(e) *Replacement certificate.* An application for a replacement Certificate of Citizenship must be submitted on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

PART 499—[REMOVED]

■ 268. Part 499 is removed.

Janet Napolitano,

Secretary.

[FR Doc. 2011–20990 Filed 8–26–11; 8:45 am]

BILLING CODE 9111–97–P

FEDERAL REGISTER

Vol. 76 Monday,

No. 167 August 29, 2011

Part IV

The President

Proclamation 8699—Women's Equality Day, 2011

Federal Register
Vol. 76, No. 167
Monday, August 29, 2011

Presidential Documents

Title 3—

The President

Proclamation 8699 of August 25, 2011

Women's Equality Day, 2011

By the President of the United States of America

A Proclamation

The 19th Amendment to the United States Constitution tore down the last formal barrier to women's enfranchisement in our Nation and empowered America's women to have their voices heard in the halls of power. This Amendment became law only after decades of work by committed trailblazers who fought to extend the right to vote to women across America. For the women who fought for this right, voting was not the end of the journey for equality, but the beginning of a new era in the advancement of our Union. These brave and tenacious women challenged our Nation to live up to its founding principles, and their legacy inspires us to reach ever higher in our pursuit of liberty and equality for all.

Before the Amendment took effect, women had been serving our Nation in the public realm since its earliest days. Even before they gained the right to vote, America's women were leaders of movements, academics, and reformers, and had even served in the Congress. Legions of brave women wrote and lectured for change. They let their feet speak when their voices alone were not enough, protesting and marching for their fundamental right to vote in the face of heckling, jail, and abuse. Their efforts led to enormous progress—millions upon millions of women have since used the power of the ballot to help shape our country.

Today, our Nation's daughters reap the benefits of these courageous pioneers while paving the way for generations of women to come. But work still remains. My Administration is committed to advancing equality for all of our people. This year, the Council of Women and Girls released ''*Women in America: Indicators of Social and Economic Well-Being*,'' the most comprehensive report in 50 years on the status of women in our country, shedding light on issues women face in employment, crime, health, and family life. We are working to ensure that women-owned businesses can compete in the marketplace, that women are not discriminated against in healthcare, and that we redouble our efforts to bring an end to sexual assault on college campuses.

On the 91st anniversary of this landmark in civil rights, we continue to uphold the foundational American principles that we are all equal, and that each of us deserves a chance to pursue our dreams. We honor the heroes who have given of themselves to advance the causes of justice, opportunity, and prosperity. As we celebrate the legacy of those who made enormous strides in the last century and before, we renew our commitment to hold true to the dreams for which they fought, and we look forward to a bright future for our Nation's daughters.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim August 26, 2011, as Women's Equality Day. I call upon the people of the United States to celebrate the achievements of women and recommit ourselves to the goal of gender equality in this country.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–22256
Filed 8–26–11; 11:15 am]
Billing code 3195–W1–P

Reader Aids

Federal Register

Vol. 76, No. 167

Monday, August 29, 2011

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, 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.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.infonara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, AUGUST

45653–46184 1
46185–46594 2
46595–47054 3
47055–47422 4
47423–47984 5
47985–48712 8
48713–49278 9
49279–49648 10
49649–50110 11
50111–50402 12
50403–50660 15
50661–50880 16
50881–51244 17
51245–51868 18
51869–52208 19
52209–52532 22
52533–52850 23
52851–53044 24
53045–53300 25
53301–53630 26
53631–53810 29

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8696 46183
8697 49277
8698 49647
8699 53809

Executive Orders:
13582 52209
13583 52847

Administrative Orders:
Notices:
Notice of July 28, 2011 45653
Notice of August 12, 2011 50661
Presidential Determinations:
No. 2011–12 of August 8, 2011 53297
No. 2011–13 of August 10, 2011 53299

5 CFR

293 52533
532 ..... 52537, 53045
550 52537
843 52539

Proposed Rules:
213 47495
250 47516
302 47495
315 47495
330 47495
334 47495
362 47495
530 45710
531 ..... 45710, 47495
536 ..... 45710, 47495
550 47495
575 47495
733 52287
890 47495

6 CFR

Proposed Rules:
31 46908

7 CFR

2 52851
205 46595
301 ..... 52541, 52543
319 52544
946 48713
1217 46185
1730 47055
2902 53631
3201 53631
3202 53631

Proposed Rules:
272 51907
273 ..... 51274, 51907
276 51274
277 52581
319 46209
402 50929
906 49381
920 48742
923 46651
984 50703

8 CFR

1 53764
100 53764
103 53764
204 53764
207 53764
208 53764
209 53764
211 53764
212 53764
213a 53764
214 53764
223 53764
235 53764
236 53764
238 53764
240 53764
241 53764
244 53764
245 53764
245a 53764
248 53764
264 53764
265 53764
270 53764
274a 53764
287 53764
292 53764
299 53764
301 53764
310 53764
312 53764
316 53764
319 53764
320 53764
322 53764
324 53764
325 53764
328 53764
329 53764
330 53764
332 53764
333 53764
334 53764
335 53764
336 53764
337 53764
338 53764
339 53764
340 53764
341 53764
342 53764
343 53764
343a 53764
343b 53764

343c 53764
392 53764
499 53764
Proposed Rules:
100 52890

9 CFR

93 52547
161 52548
201 50881
Proposed Rules:
71 50082
77 50082
78 50082
90 50082

10 CFR

429 46202
430 ....46202, 52852, 52854
433 49279
435 49279
Proposed Rules:
26 46651
40 47085
429 ....48745, 49238
430 ....47518, 49238, 50145, 52892
431 ....47518, 48745, 50148, 51281

12 CFR

100 48950
108 48950
109 48950
112 48950
116 48950
128 48950
133 48950
136 48950
141 48950
143 48950
144 48950
145 48950
146 48950
150 48950
151 48950
152 48950
155 48950
157 48950
159 48950
160 48950
161 48950
162 48950
163 48950
164 48950
165 48950
167 48950
168 48950
169 48950
170 48950
171 48950
172 48950
174 48950
190 48950
191 48950
192 48950
193 48950
194 48950
195 48950
196 48950
197 48950
Ch. III 47652
908 53596
1204 51869
1209 53596
1780 53596
Proposed Rules:
240 46652
615 ....51289, 53344

14 CFR

33 47423
39 ....45655, 45657, 46597, 47056, 47424, 47427, 47430, 50111, 50113, 50115, 50403, 50405, 50881, 52213, 52217, 52220, 52222, 52225, 53046, 53301, 53303, 53305, 53308, 53312, 53315, 53317, 53324, 53326, 53633
65 47058
71 ....47060, 47061, 47435, 49285, 52229, 52230, 53048, 53049, 53328, 53636
91 52231
95 46202
97 ....47985, 47988, 52237, 52239
119 52231
121 52241
125 52231
133 52231
137 52231
141 52231
142 52231
145 52231
147 52231
Proposed Rules:
39 ....45713, 47520, 47522, 48045, 48047, 48049, 48749, 50152, 50706, 52288, 52593, 52899, 52901, 53346, 53348
71 ....49383, 49385, 49386, 49387, 49388, 49390, 50156, 52290, 52291, 52292, 52596, 52905, 53352, 53353, 53354, 53355, 53356, 53358, 53359, 53360, 53361

15 CFR

744 50407
Proposed Rules:
Ch. VII 47527
801 50158

16 CFR

3 52249
4 52249
Ch. II 46598, 49286
310 53636
1450 47436
Proposed Rules:
239 52596
305 45715
424 51308
700 52596
701 52596
702 52596
703 52596
1130 48053

17 CFR

35 49291
40 45666
165 53172
200 46603
210 50117
229 ....46603, 50117
230 ....46603, 50117
232 ....46603, 47438
239 ....46603, 50117
240 ....46603, 46960, 50117, 52549
249 ....46603, 46960, 50117, 52549
270 50117
274 50117
Proposed Rules:
1 ....45724, 45730, 47526
23 ....45724, 45730, 47526
39 ....45730, 47526
71 46212
229 47948
230 ....47948, 49698
239 47948
240 46668
249 47948

18 CFR

35 49842
260 52253
292 50663
Proposed Rules:
357 46668

19 CFR

159 ....50883, 52862
Proposed Rules:
10 51914
101 52890
163 51914

20 CFR

655 45667

21 CFR

520 ....48714, 49649, 53050
522 ....48714, 53050
524 48714
866 48715
870 50663
884 50663
886 51876
Proposed Rules:
73 49707
101 ....46671, 49707
573 48751
870 ....47085, 48058
882 48062

22 CFR

126 47990
Proposed Rules:
228 51916

23 CFR

Proposed Rules:
655 46213

24 CFR

Proposed Rules:
202 53362

25 CFR

Proposed Rules:
Ch. III 47089, 50436

26 CFR

1 ....45673, 49300, 49570, 50887, 51878, 51879, 52556
17 51879
20 49570
25 49570
51 51245
54 46621
301 ....52259, 52561
602 ....51245, 52556
Proposed Rules:
1 ....50931, 51922
31 50949
40 46677
49 46677
51 51310
54 ....46677, 52442, 52475
602 52442

27 CFR

24 52862
25 52862
26 52862
40 52862
41 52862
70 52862
Proposed Rules:
40 52913
41 52913
44 52913
45 52913
46 52913

29 CFR

9 53720
2590 46621
4022 50413
Proposed Rules:
2590 ....52442, 52475

30 CFR

Proposed Rules:
917 50436
943 50708
1206 52294

31 CFR

10 49650
1010 45689

32 CFR

159 49650
319 ....49658, 49659
323 49661

33 CFR

100 ....52236, 52563, 52865, 53329, 53337
117 ....45690, 47440, 48717, 49300, 49662, 49663, 49664, 50123, 50124, 51885, 52565, 52566, 52567, 53341, 53342
165 ....45693, 46626, 47441, 47993, 47996, 48718, 49301, 49664, 49666, 50124, 50667, 50669, 50680, 51255, 51887, 52266, 52268, 52269, 52569, 53051, 53054, 53337
Proposed Rules:
110 52599
117 ....50161, 50950, 52602
165 ....45738, 48070, 48751, 50710
167 47529
Subch. S 53364

34 CFR

668 52271

37 CFR

370 45695
382 45695

38 CFR

1 51890

2.....51890
3.....52572
17.....52272
20.....52572
21.....45697, 49669
51.....52274
63.....52575

39 CFR

20.....50414, 53056
111.....48722, 51257
775.....53037
912.....52580
Proposed Rules:
111.....50438
3020.....51311
3050.....52915

40 CFR

1.....49669
2.....49669
9.....47996
21.....49669
35.....49669
49.....49669
51.....48208
52.....45705, 47062, 47068, 47074, 47076, 47443, 48002, 48006, 48208, 49303, 49313, 49669, 50128, 50891, 51264, 51901, 51903, 52275, 52278, 52283, 52388, 52867, 53638, 53640
59.....49669
60.....49669
61.....49669
62.....49669
63.....49669
65.....49669
72.....48208, 50129
75.....50129
78.....48208
82.....47451, 49669
97.....48208
98.....53037
147.....49669
180.....49318, 50893, 50898, 50904, 52871, 52875, 53641
282.....49669
300.....49324, 50133, 50414, 51266
374.....49669
704.....50816
707.....49669
710.....50816
711.....50816
721.....47996
745.....47918
763.....49669
Proposed Rules:
50.....46084, 48073
52.....45741, 47090, 47092, 47094, 48754, 49391, 49708, 49711, 51314, 51922, 51925, 51927, 52604, 52623, 52917, 53369
60.....52738, 53371
63.....52738, 53371
72.....50164
75.....50164
85.....48758
86.....48758
98.....47392
174.....49396
180.....49396, 53372
260.....48073, 53376
261.....48073, 53376
270.....53376
300.....49397, 50164, 50441, 51316
370.....48093
600.....48758
721.....46678

41 CFR

Proposed Rules:
60.....49398
Ch. 301.....46216

42 CFR

50.....53256
412.....47836, 51476
413.....48486, 51476
418.....47302
476.....51476
Proposed Rules:
5.....50442, 53377
430.....46684
431.....51148
433.....46684, 51148
435.....51148
447.....46684
457.....46684, 51148

43 CFR

Proposed Rules:
2.....52295

44 CFR

64.....49329
65.....49674, 50420, 50423, 50913, 50915, 52879
67.....49676, 50918, 50920
Proposed Rules:
67.....46701, 46705, 46715, 46716, 50443, 50446, 50952, 50960, 53082

45 CFR

94.....53256
147.....46621
Proposed Rules:
147.....52442, 52475
155.....51202
157.....51202
170.....48769

46 CFR

Proposed Rules:
1.....45908, 46217, 48101
2.....47531, 49976
10.....45908, 46217, 48101
11.....45908, 46217, 48101
12.....45908, 46217, 48101
13.....45908, 46217, 48101
14.....45908, 46217, 48101
15.....45908, 46217, 49976
28.....51317
136.....49976
137.....49976
138.....49976
139.....49976
140.....49976
141.....49976
142.....49976
143.....49976
144.....49976
401.....47095, 50713

47 CFR

1.....49333, 49364
2.....49364
25.....49364, 50425
64.....47469, 47476
73.....49364, 49697
90.....51271
Proposed Rules:
9.....47114
36.....49401
54.....49401, 50969
61.....49401
64.....49401, 52625
69.....49401
73.....52632

48 CFR

201.....52139
209.....52138
216.....52133
225.....52132, 52133
245.....52139
252.....52133, 52138, 52139
1401.....50141
1402.....50141
1415.....50141
1417.....50141
1419.....50141
1436.....50141
1452.....50141
1816.....46206
6101.....50926
6103.....50926
6104.....50926
6105.....50926
9903.....49365
Proposed Rules:
42.....48776, 50714
204.....52297
252.....52297
9904.....53377, 53378

49 CFR

228.....50360
383.....50433
390.....50433
563.....47478
567.....53072
571.....48009, 52880, 53648
591.....53072
592.....53072
593.....53072
595.....47078
1002.....46628
1515.....51848, 53080
1520.....51848, 53080
1522.....51848, 53080
1540.....51848, 53080
1544.....51848, 53080
1546.....51848, 53080
1548.....51848, 53080
1549.....51848, 53080
Proposed Rules:
171.....50332, 51324
172.....50332, 51324
173.....50332, 51324
174.....50332, 51324
175.....50332
176.....50332
177.....50332
178.....50332
179.....51272
180.....51272
192.....53086
236.....52918
531.....48758
533.....48758
571.....53102, 53660
580.....48101

50 CFR

17.....46632, 47490, 48722, 49542, 50052, 50680, 53224
18.....47010
80.....46150
622.....50143, 51905
635.....49368, 52886, 53343, 53652
648.....47491, 47492, 51272, 52286
665.....52888
679.....45709, 46207, 46208, 47083, 47493, 53658
Proposed Rules:
17.....46218, 46234, 46238, 46251, 46362, 47123, 47133, 48777, 49202, 49408, 49412, 50542, 50971, 51929, 52297, 53379, 53381
20.....48694, 53536
223.....50447, 50448
224.....49412, 50447, 50448
622.....46718, 50979
648.....45742, 47533
660.....50449
665.....46719
679.....49417, 52148, 52301
680.....49423

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 2553/P.L. 112–27
Airport and Airway Extension Act of 2011, Part IV (Aug. 5, 2011; 125 Stat. 270)

H.R. 2715/P.L. 112–28
To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes. (Aug. 12, 2011; 125 Stat. 273)

Last List August 5, 2011

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.