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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

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

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

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Executive Order 13549 of August 18, 2010

Classified National Security Information Program for State, Local, Tribal, and Private Sector Entities

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to ensure the proper safeguarding of information shared with State, local, tribal, and private sector entities, it is hereby ordered as follows:

Section 1. *Establishment and Policy.*

Sec. 1.1. There is established a Classified National Security Information Program (Program) designed to safeguard and govern access to classified national security information shared by the Federal Government with State, local, tribal, and private sector (SLTPS) entities.

Sec. 1.2. The purpose of this order is to ensure that security standards governing access to and safeguarding of classified material are applied in accordance with Executive Order 13526 of December 29, 2009 ("Classified National Security Information"), Executive Order 12968 of August 2, 1995, as amended ("Access to Classified Information"), Executive Order 13467 of June 30, 2008 ("Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information"), and Executive Order 12829 of January 6, 1993, as amended ("National Industrial Security Program"). Procedures for uniform implementation of these standards by SLTPS entities shall be set forth in an implementing directive to be issued by the Secretary of Homeland Security within 180 days of the date of this order, in consultation with affected executive departments and agencies (agencies), and with the concurrence of the Secretary of Defense, the Attorney General, the Director of National Intelligence, and the Director of the Information Security Oversight Office.

Sec. 1.3. Additional policy provisions for access to and safeguarding of classified information shared with SLTPS personnel include the following:

(a) Eligibility for access to classified information by SLTPS personnel shall be determined by a sponsoring agency. The level of access granted shall not exceed the Secret level, unless the sponsoring agency determines on a case-by-case basis that the applicant has a demonstrated and foreseeable need for access to Top Secret, Special Access Program, or Sensitive Compartmented Information.

(b) Upon the execution of a non-disclosure agreement prescribed by the Information Security Oversight Office or the Director of National Intelligence, and absent disqualifying conduct as determined by the clearance granting official, a duly elected or appointed Governor of a State or territory, or an official who has succeeded to that office under applicable law, may be granted access to classified information without a background investigation in accordance with the implementing directive for this order. This authorization of access may not be further delegated by the Governor to any other person.

(c) All clearances granted to SLTPS personnel, as well as accreditations granted to SLTPS facilities without a waiver, shall be accepted reciprocally by all agencies and SLTPS entities.

(d) Physical custody of classified information by State, local, and tribal (SLT) entities shall be limited to Secret information unless the location

housing the information is under the full-time management, control, and operation of the Department of Homeland Security or another agency. A standard security agreement, established by the Department of Homeland Security in consultation with the SLTPS Advisory Committee, shall be executed between the head of the SLT entity and the U.S. Government for those locations where the SLT entity will maintain physical custody of classified information.

(e) State, local, and tribal facilities where classified information is or will be used or stored shall be inspected, accredited, and monitored for compliance with established standards, in accordance with Executive Order 13526 and the implementing directive for this order, by the Department of Homeland Security or another agency that has entered into an agreement with the Department of Homeland Security to perform such inspection, accreditation, and monitoring.

(f) Private sector facilities where classified information is or will be used or stored shall be inspected, accredited, and monitored for compliance with standards established pursuant to Executive Order 12829, as amended, by the Department of Defense or the cognizant security agency under Executive Order 12829, as amended.

(g) Access to information systems that store, process, or transmit classified information shall be enforced by the rules established by the agency that controls the system and consistent with approved dissemination and handling markings applied by originators, separate from and in addition to criteria for determining eligibility for access to classified information. Access to information within restricted portals shall be based on criteria applied by the agency that controls the portal and consistent with approved dissemination and handling markings applied by originators.

(h) The National Industrial Security Program established in Executive Order 12829, as amended, shall govern the access to and safeguarding of classified information that is released to contractors, licensees, and grantees of SLT entities.

(i) All access eligibility determinations and facility security accreditations granted prior to the date of this order that do not meet the standards set forth in this order or its implementing directive shall be reconciled with those standards within a reasonable period.

(j) Pursuant to section 4.1(i)(3) of Executive Order 13526, documents created prior to the effective date of Executive Order 13526 shall not be redisseminated to other entities without the consent of the originating agency. An agency head or senior agency official may waive this requirement for specific information that originated within that agency.

Sec. 2. *Policy Direction.* With policy guidance from the National Security Advisor and in consultation with the Director of the Information Security Oversight Office, the Director of the Office of Management and Budget, and the heads of affected agencies, the Secretary of Homeland Security shall serve as the Executive Agent for the Program. This order does not displace any authorities provided by law or Executive Order and the Executive Agent shall, to the extent practicable, make use of existing structures and authorities to preclude duplication and to ensure efficiency.

Sec. 3. *SLTPS Policy Advisory Committee.* (a) There is established an SLTPS Policy Advisory Committee (Committee) to discuss Program-related policy issues in dispute in order to facilitate their resolution and to otherwise recommend changes to policies and procedures that are designed to remove undue impediments to the sharing of information under the Program. The Director of the Information Security Oversight Office shall serve as Chair of the Committee. An official designated by the Secretary of Homeland Security and a representative of SLTPS entities shall serve as Vice Chairs of the Committee. Members of the Committee shall include designees of the heads of the Departments of State, Defense, Justice, Transportation, and Energy, the Nuclear Regulatory Commission, the Office of the Director of

National Intelligence, the Central Intelligence Agency, and the Federal Bureau of Investigation. Members shall also include employees of other agencies and representatives of SLTPS entities, as nominated by any Committee member and approved by the Chair.

(b) Members of the Committee shall serve without compensation for their work on the Committee, except that any representatives of SLTPS entities may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) The Information Security Oversight Office shall provide staff support to the Committee.

(d) Insofar as the Federal Advisory Committee Act, as amended (5 App. U.S.C.)(the "Act") may apply to this order, any functions of the President under that Act, except that of reporting to the Congress, which are applicable to the Committee, shall be performed by the Administrator of General Services in accordance with guidelines and procedures established by the General Services Administration.

Sec. 4. *Operations and Oversight.* (a) The Executive Agent for the Program shall perform the following responsibilities:

(1) overall program management and oversight;

(2) accreditation, periodic inspection, and monitoring of all facilities owned or operated by SLT entities that have access to classified information, except when another agency has entered into an agreement with the Department of Homeland Security to perform some or all of these functions;

(3) processing of security clearance applications by SLTPS personnel, when requested by a sponsoring agency, on a reimbursable basis unless otherwise determined by the Department of Homeland Security and the sponsoring agency;

(4) documenting and tracking the final status of security clearances for all SLTPS personnel in consultation with the Office of Personnel Management, the Department of Defense, and the Office of the Director of National Intelligence;

(5) developing and maintaining a security profile of SLT facilities that have access to classified information; and

(6) developing training, in consultation with the Committee, for all SLTPS personnel who have been determined eligible for access to classified information, which shall cover the proper safeguarding of classified information and sanctions for unauthorized disclosure of classified information.

(b) The Secretary of Defense, or the cognizant security agency under Executive Order 12829, as amended, shall provide program management, oversight, inspection, accreditation, and monitoring of all private sector facilities that have access to classified information.

(c) The Director of National Intelligence may inspect and monitor SLTPS programs and facilities that involve access to information regarding intelligence sources, methods, and activities.

(d) Heads of agencies that sponsor SLTPS personnel and facilities for access to and storage of classified information under section 1.3(a) of this order shall:

(1) ensure on a periodic basis that there is a demonstrated, foreseeable need for such access; and

(2) provide the Secretary of Homeland Security with information, as requested by the Secretary, about SLTPS personnel sponsored for security clearances and SLT facilities approved for use of classified information prior to and after the date of this order, except when the disclosure of the association of a specific individual with an intelligence or law enforcement agency must be protected in the interest of national security, as determined by the intelligence or law enforcement agency.

Sec. 5. *Definitions.* For purposes of this order:

(a) "Access" means the ability or opportunity to gain knowledge of classified information.

(b) "Agency" means any "Executive agency" as defined in 5 U.S.C. 105; any military department as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into possession of classified information.

(c) "Classified National Security Information" or "classified information" means information that has been determined pursuant to Executive Order 13526, or any predecessor or successor order, to require protection against unauthorized disclosure, and is marked to indicate its classified status when in documentary form.

(d) "Information" means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(e) "Intelligence activities" means all activities that elements of the Intelligence Community are authorized to conduct pursuant to law or Executive Order 12333, as amended, or a successor order.

(f) "Local" entities refers to "(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; and (B) a rural community, unincorporated town or village, or other public entity" as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101(11)).

(g) "Private sector" means persons outside government who are critically involved in ensuring that public and private preparedness and response efforts are integrated as part of the Nation's Critical Infrastructure or Key Resources (CIKR), including:

(1) corporate owners and operators determined by the Secretary of Homeland Security to be part of the CIKR;

(2) subject matter experts selected to assist the Federal or State CIKR;

(3) personnel serving in specific leadership positions of CIKR coordination, operations, and oversight;

(4) employees of corporate entities relating to the protection of CIKR; or

(5) other persons not otherwise eligible for the granting of a personnel security clearance pursuant to Executive Order 12829, as amended, who are determined by the Secretary of Homeland Security to require a personnel security clearance.

(h) "Restricted portal" means a protected community of interest or similar area housed within an information system and to which access is controlled by a host agency different from the agency that controls the information system.

(i) "Sponsoring Agency" means an agency that recommends access to or possession of classified information by SLTPS personnel.

(j) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States, as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101(15)).

(k) "State, local, and tribal personnel" means any of the following persons:

(1) Governors, mayors, tribal leaders, and other elected or appointed officials of a State, local government, or tribe;

(2) State, local, and tribal law enforcement personnel and firefighters;

(3) public health, radiological health, and medical professionals of a State, local government, or tribe; and

(4) regional, State, local, and tribal emergency management agency personnel, including State Adjutants General and other appropriate public safety personnel and those personnel providing support to a Federal CIKR mission.

(l) "Tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe as defined in the Federally Recognized Tribe List Act of 1994 (25 U.S.C. 479a(2)).

(m) "United States" when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States and any waters within the territorial jurisdiction of the United States.

Sec. 6. *General Provisions.* (a) This order does not change the requirements of Executive Orders 13526, 12968, 13467, or 12829, as amended, and their successor orders and directives.

(b) Nothing in this order shall be construed to supersede or change the authorities of the Secretary of Energy or the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*); the Secretary of Defense under Executive Order 12829, as amended; the Director of the Information Security Oversight Office under Executive Order 13526 and Executive Order 12829, as amended; the Attorney General under title 18, United States Code, and the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.*); the Secretary of State under title 22, United States Code, and the Omnibus Diplomatic Security and Antiterrorism Act of 1986; or the Director of National Intelligence under the National Security Act of 1947, as amended, Executive Order 12333, as amended, Executive Order 12968, as amended, Executive Order 13467, and Executive Order 13526.

(c) Nothing in this order shall limit the authority of an agency head, or the agency head's designee, to authorize in an emergency and when necessary to respond to an imminent threat to life or in defense of the homeland, in accordance with section 4.2(b) of Executive Order 13526, the disclosure of classified information to an individual or individuals who are otherwise not eligible for access in accordance with the provisions of Executive Order 12968.

(d) Consistent with section 892(a)(4) of the Homeland Security Act of 2002 (6 U.S.C. 482(a)(4)), nothing in this order shall be interpreted as changing the requirements and authorities to protect sources and methods.

(e) Nothing in this order shall supersede measures established under the authority of law or Executive Order to protect the security and integrity of specific activities and associations that are in direct support of intelligence operations.

(f) Pursuant to section 892(e) of the Homeland Security Act of 2002 (6 U.S.C. 482(e)), all information provided to an SLTPS entity from an agency shall remain under the control of the Federal Government. Any State or local law authorizing or requiring disclosure shall not apply to such information.

(g) Nothing in this order limits the protection afforded any classified information by other provisions of law. This 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.

(h) Nothing in this order shall be construed to obligate action or otherwise affect functions by the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(i) This order shall be implemented subject to the availability of appropriations and consistent with procedures approved by the Attorney General pursuant to Executive Order 12333, as amended.

Sec. 7. *Effective Date.* This order is effective 180 days from the date of this order with the exception of section 3, which is effective immediately.

THE WHITE HOUSE,
August 18, 2010.

[FR Doc. 2010–21016
Filed 8–20–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Executive Order 13550 of August 18, 2010

Establishment of Pakistan and Afghanistan Support Office

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 202 of the Revised Statutes (22 U.S.C. 2656) and section 3161 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* There is established within the Department of State, in accordance with section 3161 of title 5, United States Code, a temporary organization to be known as the Pakistan and Afghanistan Support Office (PASO).

Sec. 2. *Purpose of the Temporary Organization.* The purpose of the PASO shall be to perform the specific project of supporting executive departments and agencies in strengthening the governments in Afghanistan and Pakistan, enhancing the capacity of those governments to resist extremists, and maintaining an effective U.S. diplomatic presence in both countries.

Sec. 3. *Functions of the Temporary Organization.* In carrying out the purpose set forth in section 2, the PASO shall:

(a) support executive departments and agencies in efforts to enhance civilian control and stable constitutional government in Pakistan, to promote a more capable, accountable, and effective government in Afghanistan that serves the Afghan people and eventually can function, especially regarding internal security, with limited international support, and to stimulate an economy that will provide licit opportunity for the people of Pakistan and Afghanistan;

(b) assume the functions assigned to the Afghanistan Support Office (ASO) as of the date of this order; and

(c) perform such other functions related to the specific project set forth in section 2 as the Secretary of State (Secretary) may assign.

Sec. 4. *Personnel and Administration.* The PASO shall be headed by a Director appointed by the Secretary. The PASO shall be based in Washington, D.C., Pakistan, and Afghanistan. The Secretary shall transfer from the ASO to the PASO the personnel, assets, liabilities, and records of the ASO.

Sec. 5. *General Provisions.*

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This 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.

(d) The PASO shall terminate at the end of the maximum period permitted by section 3161(a)(1) of title 5, United States Code, unless sooner terminated by the Secretary.

THE WHITE HOUSE,
August 18, 2010.

[FR Doc. 2010–21020
Filed 8–20–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Memorandum of August 17, 2010

Designation of Officials of the Court Services and Offender Supervision Agency to Act as Director

Memorandum for the Director of the Court Services and Offender Supervision Agency for the District of Columbia

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this memorandum, the following officials of the Court Services and Offender Supervision Agency for the District of Columbia, in the order listed, shall act as and perform the functions and duties of the office of Director of the Court Services and Offender Supervision Agency for the District of Columbia (Director) during any period in which the Director has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Director, until such time as the Director is able to perform the functions and duties of that office:

(a) Deputy Director;

(b) Associate Director, Legislative, Intergovernmental, and Public Affairs;

(c) Associate Director, Management and Administration;

(d) Associate Director, Community Supervision Services;

(e) Associate Director, Community Justice Programs;

(f) General Counsel;

(g) Chief Information Officer, Information Technology; and

(h) Associate Director, Human Resource Management.

Sec. 2. *Exceptions.*

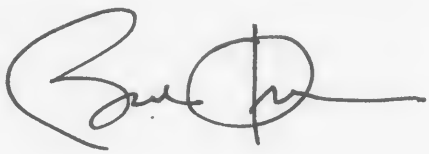
(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Director pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Director unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains the discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Sec. 3. This memorandum is intended to improve the internal management of the executive branch and 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.

Sec. 4. You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, August 17, 2010

[FR Doc. 2010–21039
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Rules and Regulations

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2010–0054]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/United States Citizenship and Immigration Services—009 Compliance Tracking and Management System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department of Homeland Security/United States Citizenship and Immigration system of records entitled the "United States Citizenship and Immigration Services—009 Compliance Tracking and Management System of Records" from certain provisions of the Privacy Act. Specifically, the Department proposes to exempt portions of the Department of Homeland Security/United States Citizenship and Immigration Services—009 Compliance Tracking and Management System of Records from certain provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective August 23, 2010.

FOR FURTHER INFORMATION CONTACT: For general questions please contact Monitoring and Compliance Branch Chief (202–358–7777), Verification Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 470 L'Enfant Plaza East, SW., Suite 8204, Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking (NPRM) in the **Federal Register**, 74 FR 23957, May 22, 2009, proposing to exempt portions of the DHS/United States Citizenship and Immigration Services (USCIS)—009 Compliance Tracking and Management System (CTMS) of Records from certain provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The DHS/USCIS—009 Compliance Tracking and Management system of records notice (SORN) was published concurrently in the **Federal Register**, 74 FR 24022, May 22, 2009 and comments were invited on both the NPRM and SORN. Comments were received on both the NPRM and SORN.

Comments on the Notice of Proposed Rulemaking (74 FR 23957, May 27, 2009)

DHS/USCIS received seven comments on the NPRM (74 FR 23957, May 22, 2009) and twelve on the SORN (74 FR 24022, May 22, 2009). One set of comments relates to a potential operational concern with the SAVE program that pertains to the DHS/USCIS—004 Verification Information System (VIS). While CTMS does deal with SAVE data, the comments in question did not relate to compliance and monitoring issues. These comments are being addressed by the SAVE program. Another set of comments concerned corporate hiring practices and did not relate to CTMS or compliance and monitoring issues generally.

Below is an analysis of each comment that specifically relate to this NPRM that is not addressed directly above. Comments were received from the National Immigration Law Center (NILC) regarding several elements of the CTMS SORN and corresponding Notice of Proposed Rulemaking (NPRM)

Comment: NILC stated that law enforcement exemptions were overbroad and unwarranted.

Response: The Department notes that Congress has stated its understanding that the USCIS employment verification system may be used for law enforcement purposes when necessary to prevent violations of the Immigration and Nationality Act (INA), and in cases of document fraud, counterfeiting and perjury (8 U.S.C. 1324a(d)(2)(F)). E-Verify was originally established for the purpose of serving as a "confirmation system through which [DHS]—

(1) Responds to inquiries made by electing persons and other entities [* * *] at any time through a toll-free telephone line or other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed, and

(2) Maintains records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under the pilot programs.". (8 U.S.C. 1324a note (at § 404(a)) "The confirmation system shall be designed and operated—

(1) To maximize its reliability and ease of use by persons and other entities making elections under section 402(a) of this division consistent with insulating and protecting the privacy and security of the underlying information;

(2) To respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

(3) With appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and

(4) To have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

(A) The selective or unauthorized use of the system to verify eligibility;

(B) The use of the system prior to an offer of employment; or

(C) The exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.". (8 U.S.C. 1324a note (at § 404(d))

CTMS serves as a vehicle by which USCIS can comply with its statutory mandate to ensure the integrity of the verification system as outlined above. Information in CTMS may provide

evidence of the improper use of the E-Verify system which directly supports the statutory mandate to prevent the misuse, discriminatory or fraudulent use of the system. Furthermore, every request for access to information in CTMS will be evaluated with the predisposition to releasing the information. USCIS will only claim the exemption if it determines that releasing the information would be contrary to a law enforcement purpose.

Comments were received from the American Immigration Lawyer Association (AILA) regarding several points.

Comment: AILA objected to the 30-day comment period.

Response: The Department notes that the Administrative Procedure Act ("APA"), 5 U.S.C. 553(c), provides that "each agency that maintains a system of records shall at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the notice in the **Federal Register** any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency." In the absence of a demonstration of a compelling need to extend this period, such as numerous requests for additional time or when the subject of the proposed governmental action is complex or exceedingly controversial, the 30 days provided for under the APA provides an opportunity for thorough, well-informed rulemaking. While AILA's comments were the only comments submitted past the 30-day time period, USCIS did consider their comments. Based on the public comments received thus far, there is nothing to suggest that there was a need for additional time.

Comment: AILA commented that the use of CTMS for law enforcement support is contrary to Congressional intent.

Response: Congress has stated its understanding that the USCIS employment verification system may be used for law enforcement purposes when necessary to prevent violations of the INA, and in cases of document fraud, counterfeiting, and perjury in the INA 8 U.S.C. 1324a(d)(2)(F). 8 U.S.C. 1324a note (at § 404(d)) requires that E-Verify have "reasonable safeguards against the system resulting in unlawful discriminatory practices based on national origin or citizenship status. including—(A) The selective or unauthorized use of the system to verify eligibility; (B) the use of the system prior to an offer of employment; or (C) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood."

CTMS serves as a vehicle by which USCIS can comply with its statutory mandate to ensure the integrity of the verification system by preventing the fraudulent use of E-Verify and SAVE and violation of the INA, as well as any misuse or discriminatory use of the system (8 U.S.C. 1324a note (at § 404(d))).

Comment: AILA expressed concern that because E-Verify is only a pilot, any results from the system should be used only for education and outreach, not law enforcement purposes.

Response: The Department acknowledges that as long as E-Verify is operational, there is the potential that it will be misused or abused. The monitoring and compliance functionality has been established to identify and resolve noncompliance. This is particularly important, regardless of the programs' status as a pilot, where misuse of the system has an immediate effect on a person's ability to work. CTMS is an integral component of these monitoring and compliance activities, as it allows for compliance activity management and storage of the information supporting the compliance determinations surrounding use of the program.

Comment: AILA expressed concern that CTMS is not an effective way to reduce identity theft, and recommends that all multiple uses of A-Number or SSN should result in a Tentative Non-Confirmation (TNC) rather than additional further research into the employer.

Response: The Department is aware of the potential for fraudulently used identity documents to be verified through the system. The USCIS Verification Division, the component of DHS responsible for the E-Verify Program and CTMS, meets with AILA annually. During a meeting held May 7, 2009, AILA and representatives from the Verification Division discussed the monitoring of multiple SSNs. USCIS is researching solutions to this potential problem. However, multiple uses of A-Number or SSN identifications do not warrant automatic TNCs since it is feasible for one individual to be accurately verified in the system multiple times, where they may hold multiple jobs or change jobs frequently. Hence, multiple uses of an A-Number or SSN are not necessarily fraudulent and should not result in a TNC in all cases. In fact, the inconvenience that would be caused to individuals who are rightly verified multiple times would outweigh the benefit of automatic TNCs. CTMS would be used to determine under which circumstances such incidents of multiple uses would indicate a need for further compliance research and would be the tool to manage any resulting compliance activity.

Comment: AILA expressed concern that an employer might try to protect itself from law enforcement activities by only selecting employees the employer perceives to be without any potential for immigration-related violations, thereby increasing immigration-related discrimination.

Response: The Department agrees that E-Verify users may try to insulate themselves from law enforcement activities by discriminatory use of these systems. As the Department has already developed a relationship for forwarding potential violations to the Department of Justice (DOJ) Office of Special Counsel (OSC) as required by law, it is vital that the monitoring and compliance activities be well developed and managed to ensure that E-Verify is looking carefully at these issues.

Comment: AILA suggested that there are better methods for reducing discrimination and misuse of E-Verify including: (1) Improving posters and providing alternative means of notification; (2) involving OSC more directly in E-Verify education and outreach efforts; (3) modifying E-Verify case resolution functionality; (4) enhancing E-Verify user reports; and (5) providing better training and reporting tools to corporate and program administrators.

Response: The Department agrees that there should be an ongoing process of evaluating and improving the methods that are used to prevent and detect misuse. In fact, AILA's suggestion regarding improving posters is supported by the compliance activity of determining whether the posters are actually being used by employers. The development of the USCIS Verification Division Monitoring and Compliance Branch and the appropriate use of the CTMS tracking and managing tool are central to this ongoing initiative, and will be used in conjunction with other program enhancements to involve employers in the compliance assistance elements of E-Verify. In addition, E-Verify continuously evaluates and improves the means of educating users about the correct way to use E-Verify, and of informing the individuals being verified of their rights. E-Verify works closely with OSC, as appropriate, using the CTMS to guide referrals to the appropriate enforcement agency. Recent changes have included significant enhancements to the training processes and additional means of notification, including adding privacy information

on the E-Verify Web site. The Department is currently evaluating the E-Verify case resolution functionality, determining additional ways to involve the users in the integrity of the programs and is investigating enhancements to the program's reporting capabilities, to address user's ability to evaluate and train individual users, and to use other means to assist users in the E-Verify processes. Further, USCIS signed a Memorandum of Agreement with the Department of Justice's Office of Special Counsel (OSC) for Unfair Immigration-Related Employment practices on March 17, 2010 that formally establishes the relationship and process for referrals between the agencies, and continued collaboration efforts, including E-Verify education and outreach.

Comments on the System of Records Notice (74 FR 24022, May 22, 2009)

Comment: NILC expressed concern that the CTMS SORN does not adequately address how monitoring and compliance will be conducted given the expanded use of SAVE by States and localities.

Response: The Department acknowledges that the expanded use of SAVE, as required by section 642(c) of the Illegal Immigration Reform and Immigrant Responsibility Act (Pub. L. 104–208, 110 Stat. 3009), will increase the number and types of SAVE users. These users will pose different monitoring and compliance challenges. However, all SAVE user agencies are subject to the policies and procedures governing use of the system. The Department is aligning the SAVE monitoring and compliance activities with the various agencies, whether federal, state, or local, in order to identify non-compliant behaviors regardless of the specific purpose of the SAVE query. In fact, in the vast majority of cases, the same type of SAVE query is conducted using the same information and documentation regardless of the purpose of the query. CTMS will be used to track and manage these monitoring and compliance activities and provide support for SAVE monitoring and compliance deliberative processes.

Comment: NILC expressed concern that E-Verify focusing on an employer's election not to use E-Verify after registering for the program would be a waste of resources as it does not actually indicate misuse of the system.

Response: The Department appreciates NILC concern that E-Verify not waste resources on a behavior that does not indicate a misuse of the system. However, once enrolled in E-Verify, employers are required to either verify all new hires through the system, or withdraw from E-Verify. This is required in order to minimize the potential of an employer using the system in a potentially discriminatory manner by verifying some employees but not others. The Department also notes that this is a good example of a misuse that would be resolved in almost all cases by E-Verify providing compliance assistance to employers to help them understand what their responsibilities are. Although CTMS is used for identifying potentially illegal activities, compliance activities are primarily focused on education, training, and awareness to assist employers to better understand the purpose of E-Verify and their role in the process.

Comment: NILC expressed concerns that, despite DHS' stated intentions, CTMS is designed to investigate immigration offenses by employees rather than misuse by employers.

Response: The Department understands the NILC's concern, but in both the SAVE and E-Verify programs the Department is mandated to focus on the relationship with the agency or employer in its operational activities not on the applicant or employee being verified. Employers are the direct users of E-Verify as are SAVE agencies the direct users of SAVE, and it is with E-Verify employers and SAVE agencies that the E-Verify or SAVE Memoranda of Understandings (MOUs) are signed. The subject of E-Verify or SAVE verification would only be contacted if the compliance activity is based on a specific lead or tip first provided voluntarily to DHS by that subject. However, if in the course of research USCIS discovers evidence of fraud by an individual verified by SAVE or E-Verify, USCIS will evaluate those matters and may refer them to the appropriate law enforcement agency.

Comment: NILC expressed concern that if CTMS is used for immigration enforcement and Privacy Act exemptions are granted, employees, those most likely to be able to witness and report on misuse, will be unwilling to make such reports.

Response: Employee information is vital to compliance analysts for interpreting various user behaviors and the monitoring and compliance effort is essential to protecting the rights of the employee from abuse by employers and other employees, as well as determining if employer or agency users are in compliance with the program terms of use. Currently, as required by law, E-Verify forwards information that suggests illegal activities to appropriate law enforcement organizations. The Department acknowledges the risk that some employees may be unwilling to report cases of misuse of E-Verify or SAVE because of their concerns regarding CTMS's immigration enforcement capability and its Privacy Act exemptions. This risk however, is one that must be accepted in order to effectively and adequately protect the integrity of any law enforcement investigations that result from monitoring and compliance activities within CTMS.

Comments were received from the American Council on International Personnel (ACIP) regarding two points.

Comment: ACIP requested that E-Verify should work directly with employers before any effort is made to refer potential issues to law enforcement organizations.

Response: The Department agrees with ACIP and E-Verify has developed an escalating approach to compliance in which noncompliance is resolved by contacting and working with the employer directly when possible. The purpose of collecting information in the CTMS is to allow compliance analysts to determine the correct approach to involving the employer or agency in the compliance process. E-Verify begins from a position of "compliance assistance," which is to educate employers and ensure proper policies and procedures are followed. If, after the employer has been contacted, noncompliance is ongoing or more egregious, E-Verify may escalate to compliance activities that involve more direct interaction with employers, which may include collecting additional information from the employer for analysis. For those situations where USCIS believes there is more egregious noncompliance, E-Verify may make a referral to a law enforcement agency for the appropriate enforcement action. CTMS tracks and manages this process.

Comment: ACIP suggested the use of additional advanced technologies to prevent fraud and misuse.

Response: The Department appreciates ACIP's comment and is continuing to investigate a number of technologies and processes that would increase the integrity of the SAVE and E-Verify program, but believes that as no technology will be able to stop all cases of misuse, DHS must develop a system and process for researching, tracking, and managing potential cases of misuse, abuse, fraud, or discrimination.

Comment: AILA expressed concern that CTMS is beyond the scope of authority for E-Verify established by IIRIRA, but that if CTMS is to be used it should be used as a tool to focus

attention on employees who might be misusing documentation.

Response: The Department is aware of the need to ensure that that E-Verify and SAVE are not misused. However, because these programs work directly with the employers and SAVE agencies, and do not have a direct relationship with the individuals being verified, it is necessary to focus on the users of the programs. Thus, the employers and SAVE agency users create a contractual relationship with DHS through their registration and signing of the program Memoranda of Understanding (MOUs) which establish the parameters of their use. In light of this relationship, the Department can work to train users on the correct use of the programs. Until Congress directs otherwise, these programs must focus on the E-Verify and SAVE users.

Comment: AILA expressed concern that DHS failed to consult with employer representatives in the development and implementation of E-Verify as required by IIRIRA, Section 402(d)(1).

Response: E-Verify works with the user population on changes to continuously improve the program, through outreach and interaction with employers and agencies by conducting training sessions, Webinars, and outreach events throughout the United States. These outreach initiatives have resulted in changes to E-Verify, for example changes have been made to simplify E-Verify language and to change data handling procedures to make it more convenient for employers and employees using E-Verify. E-Verify also evaluates and implements, where possible, the suggestions of employer advocacy organizations, for example the program is currently evaluating changes to the program that would increase enhanced program authentication methods. The Westat Reports, the statutorily mandated third party review of E-Verify, are published to the Web to inform employers of recommendations for improving the integrity of the program. These efforts meet the requirements of IIRIRA § 402 (d)(1) which provide that DHS "shall closely consult with representatives of employers (and recruiters and referrers) in the development and implementation of the pilot programs, including the education of employers (and recruiters and referrers) about such programs."

Comment: AILA recommended that DHS not devote resources to the CTMS system until release of the pending Westat Report.

Response: The Westat Reports of 2002 and 2007 recommended that USCIS develop monitoring and compliance capability. The USCIS Verification Division Monitoring and Compliance Branch has developed CTMS as a support tool for its operations. Recommendations from the next Westat Report, along with experience from monitoring and compliance activities, will be an input to this continuous improvement function.

USCIS Verification Division Monitoring and Compliance Branch operations have been developed based on best practices, as well as knowledge of the E-Verify system and the ways in which it could potentially be misused or abused. The previous Westat Reports served as a reference while the USCIS Verification Division Monitoring and Compliance Branch was being formulated; future Westat Reports will likewise be leveraged. However, the absence of a "perfect" E-Verify system should not preclude the establishment of a monitoring and compliance component, along with the associated tools, such as CTMS. As long as the system is being used, USCIS has a responsibility to ensure that the system is being used appropriately and in accordance with program rules and regulations. The USCIS Verification Division Monitoring and Compliance Branch, and associated management tools, fulfill that function.

Having taken into consideration and addressed public comments resulting from this NPRM and SORN, as well as the Department's position on these public comments, DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 et seq.; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph "49":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

49. The DHS/USCIS—009 Compliance Tracking and Management System of Records consists of electronic and paper files that will be used by DHS and its components. This system of records will be used to perform a range of information management and analytic functions involving minimizing misuse, abuse, discrimination, breach of privacy, and fraudulent use of SAVE and E-Verify. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interest of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures

pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Mary Ellen Callahan,
Chief Privacy Officer, Department of Homeland Security.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket ID OCC–2010–0007]

RIN 1557–AD23

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

[Docket No. R–1357]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 365

RIN 3064–AD43

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[Docket No. 2010—0021]

RIN 1550–AC33

FARM CREDIT ADMINISTRATION

12 CFR Part 610

RIN 3052–AC52

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 741 and 761

RIN 3133–AD59

Registration of Mortgage Loan Originators

Correction

In rule document 2010–18148 beginning on page 44656 in the issue of Wednesday, July 28, 2010, make the following corrections:

On pages 44656 through 44684, in Separate Part IV, footnotes 1 through 67 were not correctly numbered. The entire preamble is being reprinted to include the correctly numbered footnotes.

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); Farm Credit Administration (FCA); and National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC, OTS, FCA, and NCUA (collectively, the Agencies) are adopting final rules to implement the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act). The S.A.F.E. Act requires an employee of a bank, savings association, credit union or Farm Credit System (FCS) institution and certain of their subsidiaries that are regulated by a Federal banking agency or the FCA (collectively, Agency-regulated institutions) who acts as a residential mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry, obtain a unique identifier, and maintain this registration. The final rule further provides that Agency-regulated institutions must: require their employees who act as residential mortgage loan originators to comply with the S.A.F.E. Act's requirements to register and obtain a unique identifier, and adopt and follow written policies and procedures designed to assure compliance with these requirements.

DATES: This final rule is effective on October 1, 2010. Compliance with § __.103 (registration requirement) of the final rule is required by the end of the 180-day period for initial registrations beginning on the date the Agencies provide in a public notice that the Registry is accepting initial registrations.

FOR FURTHER INFORMATION CONTACT:

OCC: Michele Meyer, Assistant Director, Heidi Thomas, Special Counsel, or Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities, (202) 874–5090, and Nan Goulet, Senior Advisor, Large Bank Supervision, (202) 874–5224, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Anne Zorc, Counsel, Legal Division, (202) 452–3876, Virginia Gibbs, Senior Supervisory Analyst, (202) 452–2521, and Stanley Rediger, Supervisory Financial Analyst, (202) 452–2629, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Thomas F. Lyons, Examination Specialist, (202) 898–6850, Victoria Pawelski, Senior Policy Analyst, (202) 898–3571, or John P. Kotsiras, Financial Analyst, (202) 898–6620, Division of Supervision and Consumer Protection; or Richard Foley, Counsel, (202) 898–3784, or Kimberly A. Stock, Counsel, (202) 898–3815, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Charlotte M. Bahin, Special Counsel (Special Projects), (202) 906–6452, Vicki Hawkins-Jones, Special Counsel, Regulations and Legislation Division, (202) 906–7034, Debbie Merkle, Project Manager, Credit Risk, (202) 906–5688, and Rhonda Daniels, Senior Compliance Program Analyst, Consumer Regulations, (202) 906–7158, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

FCA: Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4434, or Richard A. Katz, Senior Counsel, or Jennifer Cohn, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4020, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NCUA: Regina Metz, Staff Attorney, Office of General Counsel, 703–518–6561, or Lisa Dolin, Program Officer, Division of Supervision, Office of Examination and Insurance, 703–518–6360, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Requirements

The S.A.F.E Act,[1] enacted on July 30, 2008, mandates a nationwide licensing and registration system for mortgage loan originators. Specifically, the Act requires all States to provide for a licensing and registration regime for mortgage loan originators who are not employed by Agency-regulated institutions within one year of enactment (or two years for States whose legislatures meet biennially). In addition, the S.A.F.E. Act requires the OCC, Board, FDIC, OTS and NCUA,[2] through the Federal Financial Institutions Examination Council (FFIEC), and the FCA to develop and

[1] The S.A.F.E. Act was enacted as part of the Housing and Economic Recovery Act of 2008, Public Law 110–289, Division A, Title V, sections 1501–1517, 122 Stat. 2654, 2810–2824 (July 30, 2008), *codified at* 12 U.S.C. 5101–5116. Citations in this Supplementary Information section are to the "S.A.F.E. Act" by section number in the public law.

[2] The OCC, Board, FDIC, OTS, and NCUA are referred to both in the S.A.F.E. Act and in this rulemaking as the "Federal banking agencies."

maintain a system for registering mortgage loan originators employed by Agency-regulated institutions. The S.A.F.E. Act specifically prohibits an individual from engaging in the business of residential mortgage loan origination without first obtaining and maintaining annually: (1) A registration as a registered mortgage loan originator and a unique identifier if employed by an Agency-regulated institution (Federal registration), or (2) a license and registration as a State-licensed mortgage loan originator and a unique identifier.[3] The S.A.F.E. Act requires that Federal registration and State licensing and registration must be accomplished through the same online registration system, the Nationwide Mortgage Licensing System and Registry (Registry).

In connection with the Federal registration, the Agencies at a minimum must ensure that the Registry is furnished with information concerning the mortgage loan originator's identity, including: (1) Fingerprints for submission to the Federal Bureau of Investigation (FBI) and any other relevant governmental agency for a State and national criminal history background check; and (2) personal history and experience, including authorization for the Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.[4] On June 9, 2009, the Agencies issued a notice of proposed rulemaking to implement these requirements for Agency-regulated institutions.[5]

B. Implementing the Requirements for Federal Registration

The Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) have developed and maintain a Web-based system, the Nationwide Mortgage Licensing System (NMLS), for the State licensing of mortgage loan originators in participating States.[6] Mortgage loan originators in these States electronically complete a single uniform form (the MU4 form). The data provided on the form is stored electronically in a centralized repository available to State regulators of mortgage companies, who use it to process license applications and to authorize individuals to engage in mortgage loan origination, as well as for other supervisory purposes.

The Federal banking agencies, through the FFIEC, and the FCA are working with CSBS to modify the NMLS so that it can accept registrations from mortgage loan originators employed by Agency-regulated institutions. This modified registry will be renamed the Nationwide Mortgage Licensing System and Registry. The existing NMLS was not designed to support the Federal registration of Agency-regulated institution employees, who are not required to obtain additional authorization from the appropriate Federal agency to engage in mortgage loan origination activities that are permissible for an Agency-regulated institution. Accordingly, the system must be modified to accommodate the differences between the requirements for State licensing/registration and Federal registration. It also must be modified to accommodate the migration of an individual between the State licensing/registration and the Federal registration regimes or the dual employment of an individual by both an Agency-regulated institution and a non-Agency-regulated institution.[7] Furthermore, the S.A.F.E. Act requires new enhancements to the current system, such as the processing of fingerprints and public access to certain mortgage loan originator data. These modifications and enhancements require careful analysis and raise complex legal and system development issues that the Agencies are addressing both through this rulemaking and through consultation with the CSBS and the SRR. The OCC, on behalf of the Agencies, has entered into an agreement with the SRR that will provide for appropriate consultation between the Agencies and the Registry concerning Federal registrant information requirements and fees, system functionality and security, and other operational matters. The issuance of this final rule establishing the requirements for Federal registrants will enable the Agencies and SRR to complete modifications that will enable the system to accept Federal registrations. As described in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Agencies will publicly announce the date on which the Registry will begin accepting Federal registrations, which will mark the beginning of the period during which employees of Agency-regulated institutions must complete the initial registration process. When fully operational, mortgage loan originators and their Agency-regulated institution employers are expected to have access to the Registry, seven days a week, to establish and maintain their registrations.[8]

II. Overview of the Proposal and Public Comments

The proposed rule required individuals employed by Agency-regulated institutions who act as mortgage loan originators and who do not qualify for the *de minimis* exception set forth in the proposal to register with the Registry, obtain unique identifiers, and maintain their registrations through updates and renewals. The proposal also directed Agency-regulated institutions to require compliance with these requirements, and to adopt and follow written policies and procedures to assure such compliance. The S.A.F.E. Act does not require the Registry to screen or approve registrations received from employees of Agency-regulated institutions and the Registry will not do so. Instead, the Registry will be the repository of, and conduit for, information on those employees who are mortgage loan originators at Agency-regulated institutions. Pursuant to §§ __.104(d) and (h) of the proposed rule, it would be the responsibility of each Agency-regulated institution to establish reasonable procedures for

[3] If the Secretary of Housing and Urban Development (HUD) determines that any State fails, within the statutorily prescribed timeframe, to establish a licensing regime that meets the requirements of the S.A.F.E. Act, the Secretary is required to establish a system for the licensing and registration of mortgage loan originators in that State. S.A.F.E. Act at section 1508. See HUD proposed rule implementing this requirement at 75 FR 66548 (Dec. 15, 2009). HUD has reviewed the model legislation developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to assist States in meeting the minimum requirements of the S.A.F.E. Act and found it to meet these requirements. See 74 FR 312 (Jan. 5, 2009) and *http://www.hud.gov/offices/hsg/ramh/safe/cmsl.cfm*.

[4] S.A.F.E. Act at section 1507(a) (12 U.S.C. 5106(a)).

[5] 74 FR 27386 (June 9, 2009).

[6] The NMLS system is owned and operated by the State Regulatory Registry LLC (SRR), which is a limited-liability company established by CSBS and the American Association of Residential Mortgage Regulators as a subsidiary of CSBS to develop and operate nationwide systems for State regulators in the financial services industry. SRR has contracted with the Financial Industry Regulatory Authority (FINRA) to build and maintain the system. FINRA operates similar systems in the securities industry. More information about this system is available at *http://www.stateregulatoryregistry.org*.

[7] The Agencies note that some employees of Agency-regulated institutions also may be subject to the State licensing and registration regime. For example, employees who act as mortgage loan originators for a bank and a nondepository subsidiary of a bank holding company that is not a subsidiary of a depository institution would be subject to both the Federal and State regimes.

[8] Pursuant to section 1503(11) of the S.A.F.E. Act (12 U.S.C. 5102(11)), Agency-regulated institutions and their employees who are acting within the scope of their employment with the Agency-regulated institutions are not subject to State licensing or registration requirements for mortgage loan originators.

confirming the adequacy and accuracy of employee registrations as well as to establish a process for reviewing any criminal history background reports received from the Registry.

The proposal provided for a 180-day period within which to complete initial registrations after the Registry is capable of accepting registrations from employees of Agency-regulated institutions. During this period, employees of Agency-regulated institutions would not be subject to sanctions if they originate residential mortgage loans without having completed their registration.

The Agencies received over 140 different comment letters from financial institutions and holding companies, trade associations, Federal government agencies, a training company, and individuals. A number of Agency-regulated institutions objected to the registration requirement in general, suggesting that the registration requirement should not be applied to them because they were not involved in the abuses that led to the enactment of the S.A.F.E. Act. In addition, many of these commenters found the registration requirement overly burdensome, especially as they are subject to regular examinations by the Agencies and they already closely supervise the activities of their employees.

Many commenters raised concerns related to the proposed *de minimis* exception from the registration requirement. Under the proposed *de minimis* exception, a mortgage loan originator would not have to register if he or she acted as a mortgage loan originator for five or fewer loans and the Agency-regulated institution employs mortgage loan originators who, while excepted from registration pursuant to the individual exception, in the aggregate acted as mortgage loan originators in connection with 25 or fewer residential mortgage loans. Commenters suggested raising the mortgage loan originator and institution loan limits or eliminating one of the limits. Community bank trade associations were particularly concerned that the narrowness of the exception would exclude most community banks. Some commenters suggested that the exception should be tied to an asset-based threshold in the range of $250 million to $1 billion.

Most commenters objected to having employees who engage in loan modifications or assumptions register under the rule, noting that these activities are fundamentally different than the mortgage loan origination process in that loan modifications and assumptions: (1) Are loss mitigation activities, not loan originations; (2) provide loan modification or assumption personnel little to no discretion in negotiating the terms and conditions of any changes; and (3) are outside of the Congressional intent and the plain language of the S.A.F.E. Act.

While some commenters found the 180-day initial registration period adequate, a number of commenters suggested alternative periods ranging up to one year. Some trade associations and institutions supported staggering registration periods in order to reduce system demands and to tailor an implementation schedule to the particular capacities of an institution or group of institutions, as long as the implementation period would still be 180 days for each institution.

A number of commenters also raised issues related to the provision of fingerprints to the Registry. Commenters asserted that it was not appropriate to have an age limit on fingerprints as they tend not to change; that the Registry should be able to accept fingerprints in a variety of formats, such as paper and scanned digital prints; and that Agency-regulated institutions should be permitted to use existing channels to process fingerprints.

Many commenters expressed privacy and security concerns regarding the types of personal information that mortgage loan originators would have to provide to the Registry and the ability of the public to have Internet access to such information.

Trade associations and large Agency-regulated institutions overwhelmingly requested that the Registry accommodate batch processing of registrations in order to reduce the costs and burden of data input, reduce errors, and efficiently register bank employees.

The Agencies have modified the proposal to take into account many of these comments. A detailed discussion of these comment letters and the Agencies' responses to them appears in the section-by-section description of the final rule that follows.[9]

III. Section-By-Section Description of the Final Rule

Section __.101—Authority, Purpose, and Scope

The Agencies adopt paragraphs (a) and (b) of § __.101 as proposed.[10] Paragraph (a) identifies the authority for this rule as the S.A.F.E. Act.[11] Paragraph (b) states that this rule implements the S.A.F.E. Act's Federal registration requirements, which apply to individuals who originate residential mortgage loans. This provision also describes the objectives of the S.A.F.E. Act, which are derived from section 1502 of the Act (12 U.S.C. 5101).

As in the proposal, paragraph (c)(1) of § __.101 of the final rule identifies the specific entities that employ individual mortgage loan originators—entities referred to in this **SUPPLEMENTARY INFORMATION** section as Agency-regulated institutions—and that also are covered by this rule. Under the S.A.F.E. Act, a mortgage loan originator must be Federally-registered if that individual is an employee of a depository institution, an employee of any subsidiary owned and controlled by a depository institution and regulated by a Federal banking agency, or an employee of an institution regulated by the FCA.[12] Section 1503(2) of the S.A.F.E. Act (12 U.S.C. 5102(2)) provides that "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act (FDI Act),[13] and includes any credit union. As we noted in the proposal, the definition of "depository institution" in the FDI Act and in the S.A.F.E. Act does not include bank or savings association holding companies or their non-depository subsidiaries. Employees of these entities

[9] In addition to the changes described in this Supplementary Information section, the Agencies have replaced the cites in the proposed rule to sections of the S.A.F.E. Act with cites to the relevant provisions in the U.S. Code.

[10] Because each Agency's proposed rule will amend a different part of the Code of Federal Regulations, but will have similar numbering, relevant sections are cited as "§ __," followed by a number, unless otherwise noted.

[11] The Board and the OCC note that the authority in paragraph (a) of their respective rules supplements their authority to implement the S.A.F.E. Act, for example, Section 11 of the Federal Reserve Act (12 U.S.C. 248(a)) for the Board and section 5239A of the Revised Statutes (12 U.S.C. 93a) for the OCC.

[12] Agency-regulated institutions and their employees acting within the scope of their employment are subject only to the Federal registration requirements of the S.A.F.E. Act as implemented by the Agencies through this rulemaking, even if registration in the State system is available before Federal Registration. In consultation with the Agencies, CSBS/SRR are modifying the Registry so that it can accept registrations from employees of Agency-regulated institutions. An employee of an Agency-regulated institution may be engaged in activities outside the scope of his or her employment at an Agency-regulated institution that subject that employee to State licensing and registration requirements, such as dual employment at a non-Agency-regulated institution.

[13] Section 3 of the FDI Act defines "depository institution" as any bank or savings association. The term "bank" in section 3 of the FDI Act means any national bank, State bank, Federal branch, and insured branch and includes any former savings association. The term "savings association" means any Federal savings association, State savings association, and any corporation other than a bank that the FDIC and the OTS jointly determine to be operating in substantially the same manner as a savings association. 12 U.S.C. 1813.

who act as mortgage loan originators are not covered by the Federal registration requirement and, therefore, must comply with State licensing and registration requirements.

With respect to the OCC, this rule applies to national banks, Federal branches and agencies of foreign banks, their operating subsidiaries, and their employees who are mortgage loan originators.[14] For the Board, this rule applies to member banks of the Federal Reserve System (other than national banks); their respective subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)); [15] branches and agencies of foreign banks (other than Federal branches, Federal agencies and insured State branches of foreign banks); commercial lending companies owned or controlled by foreign banks; [16] and their employees who act as mortgage loan originators. For the FDIC, this rule applies to insured State nonmember banks (including State-licensed insured branches of foreign banks) and their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers) and their employees who are mortgage loan originators. For the OTS, this rule applies to savings associations and their operating subsidiaries, and their employees who are mortgage loan originators. For the FCA, this rule applies to FCS institutions that originate residential mortgage loans under sections 1.9(3), 1.11 and 2.4(a)(2) and (b) of the Farm Credit Act of 1971, as amended (12 U.S.C. 2017(3), 2019, and 2075(a)(2) and (b)), and their employees who are mortgage loan originators.[17] For the NCUA, this rule applies to credit unions and their employees who are mortgage loan originators. Because non-Federally insured credit unions generally are not Federally regulated institutions, special registration conditions apply to them as discussed below.

As discussed in Section II, a number of commenters objected to the application of this registration requirement to employees of Agency-regulated depository institutions because, in general, they are subject to regular examinations, would be overly burdened by the registration requirement, and already closely supervise the activities of their employees. Some commenters noted that this registration requirement would penalize them for the inappropriate actions of other lenders that led to the enactment of the S.A.F.E. Act.

The Agencies note that the registration of mortgage loan originators employed by Agency-regulated institutions is explicitly required by the S.A.F.E. Act. The statute imposes a registration requirement, rather than a licensing requirement, on the employees of Agency-regulated institutions. The Agencies note that such institutions (other than non-Federally insured credit unions) already are subject to a Federal regime of examination and supervision. The S.A.F.E. Act does not authorize the Agencies to create exceptions to the registration requirement other than the *de minimis* exception described below.

Some credit union-related commenters discussed whether the final rule should apply to credit union service organizations (CUSOs). The NCUA notes that it answered these questions in a public legal opinion letter 08–0843, dated October 8, 2008, available on NCUA's Web site, *http://www.ncua.gov*. The S.A.F.E. Act treats employees of depository institution subsidiaries the same as employees of the depository institution, if the subsidiary is owned and controlled by the depository institution *and* regulated by a Federal banking agency.[18] In the case of CUSOs, however, NCUA does not have direct regulatory oversight or enforcement authority. Instead, NCUA regulation permits Federal credit unions to invest in or lend only to CUSOs that conform to the limits specified in the CUSO rule, 12 CFR Part 712.[19] NCUA has not, historically, asserted that CUSOs or their employees are exempt from applicable State licensing regimes, and the S.A.F.E. Act does not alter that approach. Nor do NCUA regulations have any applicability to CUSOs owned by State-chartered credit unions.[20] Accordingly, individuals employed by CUSOs that engage in residential mortgage loan origination activities, whether the CUSO is owned by a State or a Federal credit union, would need to be licensed in accordance with applicable State requirements.

Some commenters also asked whether non-Federally insured credit unions must register with the Registry. NCUA's proposed rule applied to Federally insured credit unions and their employees who are mortgage loan originators but commenters requested NCUA include non-Federally insured credit unions and their employees who are mortgage loan originators in the scope of NCUA's final rule. The S.A.F.E. Act requires the Agencies to develop and maintain a system for registering employees of a depository institution,

[14] The S.A.F.E. Act's definition of depository institution includes Federal branches of foreign banks but not Federal agencies of foreign banks. Federal agencies are authorized by sections 1(b)(1) and 4(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(1) and 3102(b)) and 12 CFR 28.11(g) and 28.13(a)(1) of the OCC's regulations to lend money, which would include originating mortgage loans, subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to a national bank. Thus, the Federal registration requirements apply to Federal agencies of foreign banks to the extent the registration requirements apply to national banks.

[15] The S.A.F.E. Act, by its terms, applies the Federal registration requirements to employees of a subsidiary that is owned and controlled by a State member bank and regulated by the Board. For purposes of the scope of the Board's rules, these subsidiaries are described as those that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act. Subsidiary has the meaning given that term in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), as applied to State member banks.

[16] The Board notes that its final rule covers branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks) and commercial lending companies owned or controlled by foreign banks pursuant to its authority under the International Banking Act (IBA) (Chapter 32 of Title 12) to issue such rules it deems necessary in order to perform its respective duties and functions under the chapter and to administer and carry out the provisions and purposes of the chapter and prevent evasions thereof. 12 U.S.C. 3108(a). The Board notes that the IBA provides, in relevant part, that the above entities shall conduct their operations in the United States in full compliance with provisions of any law of the United States which impose requirements that protect the rights of consumers in financial transactions, to the extent that the branch, agency, or commercial lending company engages in activities that are subject to such laws, and apply to State-chartered banks, doing business in the State in which such branch or agency or commercial lending company, as the case may be, is doing business. 12 U.S.C. 3106a(1). Under the Board's final rule, the above entities would be subject to the same Federal registration requirements as Federal branches, Federal agencies, and insured State branches of foreign banks, which are covered in the OCC and FDIC rules, respectively.

[17] Some FCS associations may not exercise their statutory authority to make residential mortgage loans, and FCS banks no longer engage in residential mortgage origination activities because they have transferred their direct lending authority to their affiliated associations. The FCA emphasizes that employees of FCS banks and associations that do not engage in residential mortgage loan origination activities are not subject to the registration requirements of the S.A.F.E. Act and these regulations. The Federal Agricultural Mortgage Corporation (Farmer Mac) is an FCS institution that among other activities operates a secondary market for rural residential mortgage loans. The FCA determines that Farmer Mac employees are not subject to the registration requirements of the S.A.F.E. Act and these implementing regulations because Farmer Mac does not engage in mortgage loan origination activities for rural residents. The Farmer Mac secondary market is modeled after Fannie Mae and Freddie Mac, and the provisions of the S.A.F.E. Act do not expressly apply to employees at Fannie Mae and Freddie Mac.

[18] Section 1503(7)(A)(ii) of the S.A.F.E. Act (12 U.S.C. 5102(7)(A)(ii)).

[19] 12 CFR part 712.

[20] In April 2008, the NCUA Board issued a proposed rule that would extend some provisions of the CUSO rule to State-chartered institutions. *See* 73 FR 23982 (May 1, 2008). The proposal has not yet been finalized.

defined to include "any credit union."[21] Consistent with the S.A.F.E. Act and in response to comments, NCUA's final rule provides for a system for registering employees of any credit union. NCUA's final rule applies to Federally insured credit unions and their employees who are mortgage loan originators and non-Federally insured credit unions and their employees who are mortgage loan originators when certain conditions are met and formal agreements reached.

When drafting its final rule, NCUA considered that, with the exception of non-Federally insured credit unions, entities covered by the Federal registration system are subject to Federal oversight. Entities subject to the Federal registration system are labeled throughout the rule as "Agency-regulated institutions." Unlike Federal credit unions and Federally insured State-chartered credit unions, non-Federally insured credit unions are neither Federally insured nor subject to NCUA's oversight. In order for non-Federally insured credit unions and their employees who are mortgage loan originators to qualify for Federal registration, they must be subject to oversight for purposes of compliance with NCUA's rule. Therefore, due to the unique nature of non-Federally insured credit unions compared with all other credit unions, NCUA is working with State supervisory authorities in those States with non-Federally insured credit unions to implement an oversight program to enable them to participate in the Federal registration system.

The oversight program will require a State supervisory authority seeking to allow non-Federally insured credit unions in its State to participate in the Federal registration system to enter into a memorandum of understanding (MOU) with NCUA. The MOU will need to address various requirements such as, but not limited to: The requirement for an applicable State supervisory authority to maintain such an MOU to allow non-Federally insured credit unions and their employees in its State to have continuous access to, and use of, the registry; examination of the non-Federally insured credit unions' compliance with the rule by either the State supervisory authority or NCUA; non-Federally insured credit unions' payment of examination fees and payment for any necessary Registry modifications; and enforcement authority and penalties for non-Federally insured credit unions for noncompliance. Any information provided by the Registry to the public about a non-Federally insured credit union and its employees must include a clear and conspicuous statement that the non-Federally insured credit union is not insured by the National Credit Union Share Insurance Fund.

If any State supervisory authority where non-Federally insured credit unions are located fails to enter into or maintain an agreement with NCUA for this registration process and oversight, the non-Federally insured credit unions and their employees in that State cannot register or maintain an existing registration under the Federal system. They instead must use the appropriate State licensing and registration system, or if the State does not have such a system, the licensing and registration system established by the Department of Housing and Urban Department (HUD) for mortgage loan originators and their employees.[22] In addition, NCUA's final rule requires that the State supervisory authorities who seek to have non-Federally insured credit unions in their States participate in the Federal registration system enter into the applicable agreement with NCUA on or before the date the Agencies provide in a public notice that the Registry is accepting initial registrations.

Finally, NCUA acknowledges that, while it is an added requirement for non-Federally insured credit unions to have their State supervisory authorities enter into an agreement with NCUA, this is necessary to have any oversight or enforcement authority at all over these entities. Absent any agreement, non-Federally insured credit unions cannot participate in the Federal registration system. They are not subject to a Federal regime of examination and supervision, and are unlike any other Agency-regulated depository institutions covered under this rule. Therefore, they are subject to a different procedure to participate in the same Federal registration system.

Section 1507 of the S.A.F.E. Act (12 U.S.C. 5106) requires the Federal banking agencies to make such *de minimis* exceptions "as may be appropriate" to the Act's registration requirements.[23] Paragraph (c)(2) of § __.101 of the proposed rule provided a *de minimis* exception based on an individual's and, in the aggregate, an institution's total number of residential mortgage loans originated in a rolling 12-month period. Specifically, the proposal provided that the registration requirements would not apply to an employee of an Agency-regulated institution if, during the last 12 months: (1) The employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans; and (2) the Agency-regulated institution employs mortgage loan originators who, while excepted from registration pursuant to this section, in the aggregate, acted as a mortgage loan originator in connection with 25 or fewer residential mortgage loans.

The Agencies received many, and varied, comments on this *de minimis* exception. Most commenters supported an exception to the rule's requirements. However, a majority of the commenters did not agree with the proposal's formulation of this exception, nor did they agree on an alternative. Specifically, some commenters requested that the Agencies raise the threshold number of loans originated by an individual mortgage loan originator and/or the institution so that more low-volume originators would qualify for the exception. These commenters indicated that, because of its narrowness, too few institutions would be able to use the exception as proposed and others would unnecessarily register employees solely to avoid accidental non-compliance with the rule. Some, however, thought that the proposed threshold numbers were too high, and could cause an institution to spread its originations over numerous employees to avoid registration. Still others said that the proposed *de minimis* exception would be fairer, and much easier to apply, if the threshold limitation applied only to the employee or to the institution, but not both. A Federal government agency commenter found that the proposed definition of *de minimis* would make the rule unduly burdensome on small community banks.

A number of commenters also suggested that the final rule base a *de*

[21] Sections 1507(a)(1) and 1503(1) and (2) of the S.A.F.E. Act (12 U.S.C. 5106(a)(1) and 5102(1) and (2)).

[22] HUD published its proposed rule to establish this system on December 15, 2009. *See* 74 FR 66548.

[23] See S.A.F.E. Act at sections 1507(c) (12 U.S.C. 5106(c)) (*de minimis* exceptions), 1504(a)(1)(A) (12 U.S.C. 5103(a)(1)(A)) (requirement to register), 1504(a)(2) (12 U.S.C. 5103(a)(2)) (requirement to obtain a unique identifier). As discussed in the Supplementary Information section of the proposed rule, the FCA has authority under section 5.17(a)(11) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2252(a)(11), to apply the *de minimis* exception to FCS institutions. Section 5.17(a)(11) of the Farm Credit Act authorizes the FCA to "exercise such incidental powers as may be necessary or appropriate to fulfill its duties. * * *" In this case, the FCA is exercising its incidental powers to fulfill the requirement in the S.A.F.E. Act that it work together with the Federal banking agencies to develop and maintain a system for registering residential mortgage loan originators at Agency-regulated institutions with the Registry. A coordinated and uniform approach to the *de minimis* exception among the Agencies is appropriate because it best fulfills the objectives of the S.A.F.E. Act.

minimis exception on a percentage of total loans or the total loan volume made at each institution, instead of the number of loans. Some trade associations and smaller institutions requested that the *de minimis* exception be based on an institution's asset-size, with suggestions ranging from the Home Mortgage Disclosure Act[24] threshold for institutions regulated by a Federal banking agency, currently set by the Board at $39 million in assets,[25] to $1 billion, which would be consistent with exceptions for small institutions in other provisions of law. Other commenters opposed an asset-based approach, with larger Agency-regulated institutions noting that the exceptions should not be structured to benefit only small institutions.

Other commenters wanted the exception to be applied to institutions with no prior history of mortgage origination fraud or to institutions with good performance histories from previous supervisory examinations, regardless of the number of loans originated. Some commenters also suggested that the exception should apply only to individuals who do not regularly or principally function as a mortgage loan originator. Some commenters noted that the exception could instead be based on the percentage of time an employee spends engaged in the origination of residential mortgage loans.

The Agencies also received conflicting comments on whether to aggregate a subsidiary's loans with the parent institution for determining *de minimis* qualification. One commenter opposed such aggregation, while another stated that an institution should be required to aggregate its loan data with that of its subsidiaries so that institutions could not "game" the system by creating new subsidiaries each time a subsidiary approaches the *de minimis* limit. Still other commenters pointed out that it would be very time consuming and burdensome to game the *de minimis* limit—rendering gaming opportunities essentially unrealistic.

Many commenters noted the complexity of the proposed exception. One commenter stated that the *de minimis* exception would not have any significant effect because the complexity of complying with it would outweigh its benefits. Others noted that the proposed exception would be difficult for an institution to monitor and maintain. Some commenters appeared to misinterpret the proposed aggregate exception.

[24] 12 U.S.C. 2801 *et seq.*

[25] *See* 12 CFR 203.2 (Regulation C).

The Agencies agree that the *de minimis* exception should be simplified, and, in particular, that it should be structured so that it may be utilized by an individual who does not regularly or principally function as a mortgage loan originator employed by any Agency-regulated institution, regardless of the size or loan volume of the institution. Therefore, the final rule eliminates the aggregate exception and includes only the first prong of the proposed *de minimis* exception, which applies only to individuals. The final rule also provides that this exception only applies if the employee has never before been registered or licensed through the Registry.

Final § __.101(c)(2) thus provides that the registration requirements of this section do not apply to an employee of an Agency-regulated institution who has never been registered or licensed through the Registry as a mortgage loan originator and who has acted as a mortgage loan originator for 5 or fewer residential mortgage loans during the last 12 months. In order to prevent manipulation of the registration requirement by structuring this exception to apply to multiple employees who each would not meet the exception's threshold for registration, the final rule prohibits any Agency-regulated institution from engaging in any act or practice to evade the limits of the *de minimis* exception. The Agencies believe that replacing the proposed institution limit with this anti-evasion prohibition is appropriate and will discourage circumvention of registration requirements without increasing an institution's administrative burden.

Monitoring compliance with the exception as revised should be less burdensome for Agency-regulated institutions. In addition, in the Agencies' view, this revised exception better balances the usefulness of the exception to Agency-regulated institutions and their mortgage loan originators with the consumer protection and fraud prevention purposes of the S.A.F.E. Act. Although the final rule specifically applies this anti-evasion provision to the *de minimis* exception, Agency-regulated institutions must not engage in any act or practice to evade any other requirement of the S.A.F.E. Act or this final rule.

The Agencies note that, as with the proposal, an employee must register with the Registry prior to engaging in mortgage loan origination activity that exceeds the exception limit. In addition, the Agencies note that the *de minimis* exception contained in the final rule is voluntary; it does not prevent a mortgage loan originator who meets the criteria for the exception from registering with the Registry if the originator chooses to do so or if his or her employer requires registration.

The Agencies note that the Federal Housing Finance Agency (FHFA) has directed Fannie Mae and Freddie Mac to require all mortgage loan applications to include the mortgage loan originator's unique identifier. For Agency regulated institutions, Fannie Mae and Freddie Mac have announced that this requirement will apply to applications dated on or after the date the Agencies require mortgage loan originators to obtain unique identifiers.[26] Agency-regulated institutions should be aware of this requirement and any future guidance that FHFA may issue to address the Agencies' implementation of the Federal registration process, including the *de minimis* exception.

The Agencies received a comment from one large financial institution requesting that we clarify whether the failure of a mortgage loan originator to register pursuant to this rulemaking has any substantive impact on a mortgage loan made by an institution that employs that originator. Neither the S.A.F.E. Act nor this final rule provides that a mortgage loan originator's failure to register as required affects the validity or enforceability of any mortgage loan contract made by the institution that employs the originator.

A few commenters suggested that in addition to the registration requirements, the final rule should impose educational and testing requirements on mortgage loan originators, as the S.A.F.E. Act does for State-licensed originators. The Agencies decline to impose such requirements. The S.A.F.E. Act does not include educational or testing requirements for mortgage loan originators employed by Agency-regulated institutions. In addition, as noted previously, the statute imposes different requirements on mortgage loan originators employed by Agency-regulated institutions. The Agencies note that these institutions already are subject to extensive Federal oversight, including regular on-site examination of their mortgage lending activities.

[26] *See* FNMA LL 02–2009: New Mortgage Loan Data Requirements (02/13/09); Fannie Mae Announcement 09–11, Mortgage Loan Data Requirements Update (10/6/09) and Announcement 09–11, Mortgage Loan Data Requirements Related FAQs (2/4/10); and Freddie Mac Single-Family Seller/Servicer Guide Bulletin, No: 2009–27 (12/4/09). The Agencies contemplate that the Registry will provide aggregate public data on unique identifier information stored in the system to Fannie Mae and Freddie Mac for compliance purposes.

Section __.102—Definitions

Section __.102 defines the terms used in the final rule. If a term is defined in the S.A.F.E. Act, the Agencies generally have incorporated the same definition in the final rule. The final rule also includes other definitions currently used by the NMLS in order to promote consistency and comparability, insofar as is feasible, between Federal registration requirements and the States' licensing requirements.

Annual renewal period. Proposed § __.102(a) required that a mortgage loan originator renew his or her registration annually during the annual renewal period and defined this period as November 1 through December 31 of each year. This is the same annual renewal period currently provided by the NMLS to mortgage loan originators regulated by a State.

This time period for renewals generated many comments. A few commenters suggested that the renewal period for Agency-regulated institutions should be at a different time of year than for originators regulated by a State. Others stated that the renewal period should be based upon the original registration date or original hire date, noting that a staggered registration process would be less burdensome for the Registry. Another commenter suggested that the employing institution determine its own renewal period for its employees. Still other commenters requested that this renewal period be lengthened from 60 to 90 days.

The Agencies decline to change the dates for the annual renewal period. As indicated above, the current system for originators regulated by a State is configured for an annual renewal period from November 1 through December 31. A different renewal period for originators employed by Agency-regulated institutions would involve functionality changes to the existing system, adding costs and lengthening the implementation time. In addition, the Agencies note that different renewal periods could cause confusion and added burden to those originators who may work for both a State-regulated and Agency-regulated institution or who may switch from a State-regulated institution to an Agency-regulated institution during the year, and to employers of such originators, as well as for institutions that control both State- and Agency-regulated institutions. For these same reasons, the Agencies also decline to increase the renewal period from 60 to 90 days. Therefore, the final rule retains the proposed renewal period of November 1 through December 31 of each year.

Mortgage loan originator. The proposed definition of "mortgage loan originator" was based on the definition of the term "loan originator" included in the S.A.F.E. Act at section 1503(3) (12 U.S.C. 5102(3)). As defined by the S.A.F.E. Act, this term means an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain. The term does not include an individual who is not a mortgage loan originator and: (1) Performs purely administrative or clerical tasks on behalf of an individual who is a mortgage loan originator; (2) performs only real estate brokerage activities (as defined in section 1503(3)(D) of the S.A.F.E. Act (12 U.S.C. 5102(3)(D)) [27] and is licensed or registered as a real estate broker in accordance with applicable State law, unless the individual is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; or (3) is solely involved in extensions of credit related to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).[28]

For purposes of the definition of mortgage loan originator, section 1503(3)(C) of the S.A.F.E. Act (12 U.S.C. 5102(3)(C)) defines "administrative or clerical tasks" to mean: (1) The receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry; and (2) communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan. The proposal included this definition as well, with one nonsubstantive difference—the proposal used the phrase "residential mortgage industry" instead of "loan in the mortgage industry" in the first prong of the definition.

The Agencies included an appendix to the proposal that listed examples of the types of activities the Agencies consider to be both within and outside the scope of residential mortgage loan origination activities. The final rule retains this appendix with certain changes as discussed in this **SUPPLEMENTARY INFORMATION** section. Individuals who receive "compensation or gain" as used in the definition of mortgage loan originator and described in this appendix include individuals who earn salaries, commissions or other incentive, or any combination thereof.

The Agencies specifically requested comment on whether the definition of "mortgage loan originator" should cover individuals who modify existing residential mortgage loans, engage in approving loan assumptions, or engage in refinancing transactions and, if so, whether these individuals should be excluded from the definition. While a few commenters believed the Agencies should cover individuals engaged in such transactions, the majority of commenters on this issue stated that this rulemaking should not cover these individuals. In general, they indicated that mortgage loan modifications and assumptions are very different from mortgage loan originations, and that employees engaged in these transactions do not meet the S.A.F.E. Act's definition of mortgage loan originator. Specifically, commenters indicated that these employees neither accept residential mortgage loan applications nor negotiate the terms of a new residential mortgage loan. Instead, they renegotiate an existing loan with the goals of mitigating any loss to the institution and, in the case of modifications, providing the borrower with a more affordable payment option or other type of modification, or, in the case of assumptions, replacing the party responsible for repaying the mortgage loan. Many commenters indicated that their employees who engage in modifications and assumptions do not

[27] The S.A.F.E. Act defines "real estate brokerage activity" to mean any activity that involves offering or providing real estate brokerage services to the public, including: (i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction); (iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (v) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), or (iv), above. S.A.F.E. Act at section 1503(3)(D) (12 U.S.C. 5102(3)(D)). Nothing in this rule would constitute an authorization for Agency-regulated institutions to engage in real estate brokerage, or any other activity, for which the institution does not have independent authority pursuant to Federal or State law, as applicable.

[28] "Timeshare plan" is defined in 11 U.S.C. 101(53D) as an interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A "timeshare interest" is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

ever originate mortgage loans, and that modifications and assumptions are performed in different departments of the institution. Many commenters also noted that applying the S.A.F.E. Act's registration requirements to employees engaged in loan modifications and assumptions could significantly hamper loan modification efforts.

The determining factor in whether the S.A.F.E. Act applies to residential mortgage loan-related transactions is whether the employee engaged in the transaction meets the definition of "mortgage loan originator." In general, neither modifications nor assumptions result in the extinguishment of an existing loan and the replacement by a new loan, but rather the terms of an existing loan are revised or the loan is assumed by a new obligor. Thus, Agency-regulated institution employees engaged in these activities typically do not take loan applications, within the meaning of the S.A.F.E. Act. Therefore, the Agencies conclude that the S.A.F.E. Act's definition of "mortgage loan originator" generally would not include employees engaged in loan modifications or assumptions because they typically would not meet the two-prong test of this definition. However, if an employee engaged in a transaction labeled a loan "modification" or "assumption" can be found to meet the definition of "mortgage loan originator," due to the nature of the specific transaction in question, he or she would be subject to the S.A.F.E. Act and this final rule. The substance of a transaction, not the label attached to it, is determinative of whether the Agency-regulated institution employee associated with it is a mortgage loan originator for purposes of this rule. For example, the Agencies believe that Agency-regulated institution employees engaged solely in bona fide cost-free loss mitigation efforts that result in reduced and sustainable payments for the borrower generally would not meet the definition of "mortgage loan originator." In this regard, it should be noted that third parties involved in foreclosure prevention activities for compensation or gain, although outside the scope of this rulemaking, may be subject to licensing and registration pursuant to State law.

The Agencies sought comment on whether the individuals who engage in certain refinancing transactions. specifically cash-out refinancing with the same lender, should be excluded from the definition of residential mortgage loan originator. Some industry commenters did not believe that such an exclusion was appropriate primarily because of the nature of a refinancing as a new loan and the potential for consumer abuse in these transactions. Other commenters also requested that we exclude individuals engaged in refinancings from the final rule's definition of mortgage loan originator, and that refinancings be excluded from the final rule's definition of residential mortgage loan, if the refinancing involves the same lender and the borrower obtained no cash proceeds. We decline to make this change. Refinancings are new loans, regardless of the lender, the loan terms, or proceeds, that involve a new application and an offer or negotiation of new loan terms. If an individual engaged in a refinancing transaction of a residential mortgage loan meets the two prongs of the definition of mortgage loan originator, he or she must comply with the requirements of the S.A.F.E. Act and this final rule.[29]

Other commenters suggested that the Agencies exclude loan servicing personnel from the requirements of this rulemaking. We decline to take this suggested approach because the S.A.F.E. Act definition is based on the activities of mortgage loan origination, rather than the job classification of the individual. An individual, regardless of job title, is a mortgage loan originator if he or she engages in the activities of mortgage loan origination within the meaning of the S.A.F.E. Act. For example, if a loan servicing employee of an Agency-regulated institution mainly performs loan servicing activities but also occasionally engages in residential mortgage loan origination, that person is a mortgage loan originator, regardless of whether he or she is called "servicing personnel." On the other hand, for example, as discussed above in connection with loan modifications, a loan servicing employee engaged solely in bona fide cost-free loss mitigation efforts which result in reduced and sustainable payments for the borrower generally would not meet the definition of "mortgage loan originator." Loan servicing employees of Agency-regulated institutions must comply with the registration requirements of the final rule if they meet both prongs of the definition of "mortgage loan originator," unless they qualify for the *de minimis* exception under § __.101(c)(2) of the final rule. Some commenters requested clarification that, when a servicing employee of an Agency-regulated institution works with a borrower to collect unpaid taxes or other costs pursuant to a repayment or collection plan, the employee is not acting as a mortgage loan originator under the Agencies' rules. The Agencies agree that such activities would generally not meet the two-prong test of this definition.

Some commenters asked the Agencies to explain whether the S.A.F.E. Act and this rule apply to residential mortgage loan originations made through an automated underwriting system, whereby an applicant inquires about, applies for, and/or receives a decision on an application electronically through an institution's Web site.[30] Although some institutions may choose to establish an automated system to collect application information and make an initial decision on a loan application, from a risk management and compliance perspective, an institution is expected to set the system parameters and monitor system output for compliance with various laws, regulations, and guidance on an ongoing basis. Such institutions are expected to register employees involved in that process who meet the definition of "mortgage loan originator," as appropriate. As indicated above, the Agencies note that Fannie Mae and Freddie Mac are requiring all residential mortgage loan applications dated on or after the compliance date for the unique identifier requirement to include the mortgage loan originator's unique identifier.[31] Institutions should keep apprised of any future guidance FHFA may issue to address this requirement.

For the reasons discussed above, the final rule includes the definition of "mortgage loan originator" as proposed, with one technical change to the definition of "administrative or clerical tasks" to make it identical to the definition of this term in section 1503(3)(C) of the S.A.F.E. Act (12 U.S.C. 5102(3)(C)).

Nationwide Mortgage Licensing System and Registry or *Registry*. Section __.102(c) of the proposed rule's definition of these terms is based on the definition included in section 1503(5) of the S.A.F.E. Act (12 U.S.C. 5102(5)). Specifically, these terms mean the system developed and maintained by CSBS and the AARMR for the State licensing and registration of State-licensed mortgage loan originators and the registration of mortgage loan

[29] Some commenters noted that the Agencies should require only one mortgage loan originator for each mortgage loan. The Agencies decline to take this approach because the S.A.F.E. Act defines a mortgage loan originator according to the two-prong test set forth in the statute.

[30] Section 107(5)(A)(x) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)(x)) requires all loans to be approved by a credit committee or loan officer. For all Federal credit unions, and to the extent State-chartered credit unions operate under a similar State law or regulation, the statutory and regulatory definition of mortgage loan originator is met and the S.A.F.E Act does apply.

[31] *See* footnote 26.

originators pursuant to section 1507 of the S.A.F.E. Act (12 U.S.C. 5106). As explained above, CSBS and the AARMR have established an online system, NMLS, that currently supports the licensing and registration of mortgage loan originators regulated by a State. The Agencies are working with CSBS to modify the NMLS to support the registration of mortgage loan originators employed by Agency-regulated institutions, and will rename this system the Nationwide Mortgage Licensing System and Registry. The Agencies received no comments on this definition and adopt it as proposed.

Registered mortgage loan originator. Pursuant to section 1503(7) of the S.A.F.E. Act (12 U.S.C. 5102(7)), the proposed rule defined this term to mean any individual who meets the definition of mortgage loan originator, is an employee of an Agency-regulated institution, and is registered pursuant to the requirements of this rule with, and maintains a unique identifier through, the Registry. This definition is the same as that included in the S.A.F.E. Act, except that the Agencies have modified it to apply only to individuals registered pursuant to regulations issued by the Agencies. The Agencies received no comments on this definition and adopt it as proposed.

Residential mortgage loan. As in section 1503(8) of the S.A.F.E. Act, (12 U.S.C. 5102(8)), the proposal defined "residential mortgage loan" as any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act (TILA) (15 U.S.C. 1602(v)) [32] or residential real estate upon which is constructed or intended to be constructed a dwelling. In addition, the proposal specifically included refinancings, reverse mortgages, home equity lines of credit and other first and second lien loans secured by a dwelling in this definition in order to clarify that originators of these types of loans are covered by the rule's requirements.

One commenter suggested that ancillary liens on an underlying mortgage loan or liens taken to provide consumers with potential tax advantages should not be considered residential mortgage loans. In addition, another commenter asked that the definition of residential mortgage loan include an exception to exclude seller-sponsored financing of the sale of lender-owned property. The Agencies decline to adopt these exclusions to the definition of "residential mortgage loan" and adopt this definition as proposed. These types of loans clearly fall within the statutory definition of "residential mortgage loans," and the S.A.F.E. Act makes no exceptions for these two situations. We do clarify, however, that this definition does not include loans for business, commercial, or agricultural purposes that use as collateral property that meets the definition of a "dwelling."

As indicated in the **SUPPLEMENTARY INFORMATION** section to the proposed rule, the FCA emphasizes that section 1503(8) of the S.A.F.E. Act (12 U.S.C. 5102(8)) and § __.102(e) do not amend or supersede sections 1.11(b) and 2.4(b) of the Farm Credit Act of 1971, as amended (12 U.S.C. 2019(b) and 2075(b)), and their implementing regulation, 12 CFR 613.3030(c), which establish the purposes for which FCS institutions may originate residential mortgage loans for eligible rural home borrowers.

Unique Identifier. The proposed rule's definition of this term was almost identical to that in section 1503(12) of the S.A.F.E. Act (12 U.S.C. 5102(12)). The Agencies received no comments on this definition and adopt it as proposed. Specifically, the final rule defines "unique identifier" to mean a number or other identifier that: (1) Permanently identifies a registered mortgage loan originator; (2) is assigned by protocols established by the Registry and the Agencies to facilitate electronic tracking of mortgage loan originators, and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators; and (3) must not be used for purposes other than those set forth in the S.A.F.E. Act.

Other terms. The Agencies note that § __.103(d) of the proposed and final rule uses the terms "control" and "financial services-related" in the descriptions of the information that is required of an employee who is a mortgage loan originator. These terms are currently defined in the Web-based MU4 form collecting information on State-licensed mortgage loan originators. In order to promote consistency of the information collected for Agency-regulated and State-licensed mortgage loan originators, the Agencies reiterate that the MU4 form's definitions of those two terms also will be used in the Web-based form collecting information on Agency-regulated mortgage loan originators and, therefore have not defined them in this rulemaking.[33]

A number of commenters requested that the Agencies define "employee" for purposes of this rulemaking to provide more clarity regarding the individuals covered by the rule. Agency-regulated institutions must have a process for identifying which employees of the institution are required to be registered mortgage loan originators.[34] As the Supreme Court has explained, "where Congress uses terms that have accumulated settled meaning under * * * the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms * * *. In the past, when Congress has used the term 'employee' without defining it, we have concluded that Congress intended to describe the conventional master-servant relationship as understood by common-law agency doctrine."[35] Section 7.07(3)(a) of the Restatement (Third) of Agency explains that "an employee is an agent whose principal controls or has the right to control the manner and means of the agent's performance of work."[36] The Agencies thus intend that the meaning of "employee" under the S.A.F.E. Act and this rule is consistent with the right-to-control test under the common law agency doctrine. The Agencies note in this regard that the IRS uses the common law right-to-control test as its basis for classification of

[32] TILA defines "dwelling" as a residential structure or mobile home which contains one-to-four family housing units, or individual units of condominiums or cooperatives. 15 U.S.C. 1602(v). Board regulations and commentary include in this definition any residential structure that contains one to four units, whether or not that structure is attached to real property, and includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence. *See* 12 CFR 226.2(a)(19) (Regulation Z).

[33] The Registry currently defines "control" as the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any *person* that (i) is a general partner or executive officer, including Chief Executive, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Credit Officer, Chief Compliance Officer, Director, and individuals occupying similar positions or performing similar functions; (ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 10% or more of the capital, is presumed to control that company. The Registry's current definition of "Financial services-related" means pertaining to securities, commodities, banking, insurance, consumer lending, or real estate (including, but not limited to, acting as or being associated with a bank or savings association, credit union, Farm Credit System institution, mortgage lender, mortgage broker, real estate salesperson or agent, appraiser, closing agent, title company, or escrow agent).

[34] *See* § __.104(a).

[35] *Nationwide Mutual Ins. Co.* v. *Durden*, 503 U.S. 318, 322–23 (1992) (citing *Community for Creative Non-Violence* v. *Reid*, 490 U.S. 730, 739–40 (1989) (other citations omitted).

[36] Restatement (Third) of Agency § 7.07(3)(a) (2006).

workers as employees.[37] The result of this test generally determines whether an institution files a W–2 or a 1099 for an individual. The Agencies therefore expect an Agency-regulated institution would identify a mortgage loan originator as an individual subject to this final rule if, following consideration of the relevant facts, the institution determines that the individual is an employee of the Agency-regulated institution.[38]

Section __.103—Registration of Mortgage Loan Originators

Section 1504(a) of the S.A.F.E. Act (12 U.S.C. 5103(a)) prohibits an individual who is an employee of an Agency-regulated institution from engaging in the business of a loan originator without registering as a loan originator with the Registry, maintaining annually such registration, and obtaining a unique identifier through the Registry. As in the proposal and described more specifically below, § __.103 of the final rule imposes the responsibility for complying with these requirements on both the individual employee and the employing institution. In addition, both the employee and the employing institution must submit information to the Registry for each registration to be complete. The Agencies note that an employee of an Agency-regulated institution who is not actively engaged in residential mortgage loan activity is not prohibited from registering with the Registry.

Employee registration requirement. In general, § __.103(a)(1) of the proposed rule required an employee of an Agency-regulated institution who acts as a mortgage loan originator to register with the Registry, obtain a unique identifier, and maintain his or her registration. This section further provided that any employee who is not in compliance with the registration and unique identifier requirements set forth in the proposed rule is in violation of the S.A.F.E. Act and this rule.[39] The Agencies note that this registration requirement would not apply if the employee qualifies for the *de minimis* exception.

The Agencies did not receive substantive comments specifically on this section and therefore adopt it as proposed.

Institution requirement. Proposed paragraph (a)(2) of § __.103 provided that an Agency-regulated institution must require its employees who are mortgage loan originators to register with the Registry, maintain this registration, and obtain a unique identifier in compliance with this final rule. This provision also prohibited an Agency-regulated institution from permitting its employees to act as mortgage loan originators unless registered with the Registry pursuant to this final rule, after the applicable implementation periods specified in §§ __.103(a)(3) and (a)(4)(ii) expire.

One commenter objected to this requirement as not being based on statutory language. Although the S.A.F.E. Act does not contain the same express prohibition as in the Agencies' proposed rule, determining the scope of mortgage loan origination activities that subject an individual or institution to the Act's requirements is well within the Agencies' authority to implement the statute. The imposition of this requirement on Agency-regulated institutions implements the purposes of the S.A.F.E. Act and ensures Agency-regulated institutions and their employees comply with all applicable laws. This commenter also stated that this requirement would be difficult to enforce because an employing institution may not know of the activities of its employees outside of their scope of employment at that institution. We agree with this commenter that the language in § __103(a)(2)(ii) should be clarified so that an institution's oversight of a mortgage loan originator applies only to the extent the originator is acting within the scope of his or her employment at that institution. We therefore adopt § __.103(a)(2)(ii) with this one change.

Implementation period for initial registrations. Proposed § __.103(a)(3) provided a 180-day implementation period for initial registrations beginning on the date the Agencies provide public notice that the Registry is accepting initial registrations. The Agencies have adopted this provision as proposed with one minor change to clarify that the implementation period begins on the date that the Agencies provide in their public notice, not the actual date of the public notice. Pursuant to the proposal, an employee could continue to originate residential mortgage loans without complying with the rule's registration requirement before and during this 180-day period. After this 180-day period expires, any existing employee or newly-hired employee of an Agency-regulated institution who is subject to the registration requirements would be prohibited from originating residential mortgage loans without first meeting such requirements.

The Agencies specifically requested comment on whether this 180-day implementation period would provide Agency-regulated institutions and their employees with adequate time to complete the initial registration process. The Agencies also inquired as to whether an alternative schedule for implementation and initial registrations would be appropriate, what such an alternative schedule should be, and whether, and how, a staggered registration process should be developed.

The Agencies received many comments on this implementation period. Some commenters supported a 180-day period. Others supported the proposed 180-day implementation period provided that certain conditions are met, such as excluding loan modification and mitigation employees from the registration requirements, allowing batch processing, simplifying the employer verification requirements, and immediate confirmation of registration without delay for fingerprint or background check results.

Other commenters, however, stated that the proposed 180-day implementation period would not provide sufficient time to register the large number of employees subject to the registration requirement, properly train all employees, develop compliance policies, and program and implement system controls. Many noted that a longer period would prevent the Registry from being overwhelmed with registrations. Two commenters, including one Federal agency, stated that additional time will particularly benefit smaller financial institutions. Another commenter indicated that the time, effort, and resources required to meet new systems requirements can be

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[37] IRS Publication 1779; *see also* Form SS–8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.*

[38] Agency-regulated institutions that are credit unions sometimes rely upon volunteers to originate mortgage loans. The right-to-control test under the common law agency doctrine likewise applies to these credit unions. Credit union management establishes the policies, procedures, and practices that volunteers use in performing their functions. Therefore, these volunteers qualify as employees of the Agency-regulated institution for purposes of the S.A.F.E. Act and this rule.

[39] The OCC, Board, FDIC, and OTS have the authority to take enforcement actions against their respective Agency-regulated institutions and individual employees of those institutions who violate the S.A.F.E. Act and this final rule, pursuant to 12 U.S.C. 1818. The FCA has authority to take enforcement actions against Farm Credit System institutions and individual employees who violate the S.A.F.E. Act and this final rule pursuant to Title V, Part C of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2261 *et seq.* The NCUA has the authority to take enforcement actions against Federally-insured credit unions and their employees who violate the S.A.F.E. Act and this final rule under 12 U.S.C. 1786. For privately insured credit unions, memoranda of understanding between NCUA and applicable State supervisory authorities will establish enforcement authority.

extensive, and that a 180-day implementation period for such major changes would be extremely difficult for larger institutions. These commenters suggested an implementation period of nine months to one year. One commenter stated that each Agency should have the flexibility to grant additional time to register in the event the Registry becomes backlogged or inundated with a large volume of registrations. No commenter requested a shorter implementation period.

The Agencies understand that Agency-regulated institutions and their mortgage loan originator employees will face certain implementation issues in complying with the registration requirements established by this rulemaking. However, as indicated above, due to various system modifications and enhancements required to make the existing system capable of accepting Federal registrants, the system is not expected to be available to accept Federal registrations before January 2011. The 180-day implementation period will not begin until the system is available to accept Federal registrations. This in effect provides institutions with an implementation period longer than 180 days as institutions and their employees can begin to implement the final rule's requirements before the Registry is operational, *i.e.*, develop policies and procedures, train employees, gather information needed for registration, and program and implement system controls before registration is required. In addition, CSBS and SRR will provide information to, and assist Agency-regulated institutions in preparation for, registration during this period. The Agencies believe that this additional time will provide mortgage loan originators, and the Agency-regulated institutions that employ them, adequate opportunity to prepare for the registration requirements. Any extension of the 180-day implementation period provided in the final rule will only further delay the registration of residential mortgage loan originators and, as a result, the consumer protection benefits of the S.A.F.E. Act. In addition, as described below, batch processing of at least some information likely will be available, which should make the registration process more efficient for both the institution and the registering employee. For these reasons, the Agencies decline to provide an implementation period longer than the proposed 180 days.

Many commenters indicated support for a staggered implementation period. Some noted that this could be based on institution size, loan origination volume, or employee qualifiers (such as birth date or last name). Some of these commenters, however, noted that they would support a staggered schedule only if it would provide a registration period of equal length for all registrants. Other commenters supported a staggered process that would give smaller institutions or institutions that do not originate many residential mortgage loans the greatest amount of time to comply with the requirements.

The Agencies agree that a staggered implementation process for those institutions that prefer one would be useful. Such a process would allow institutions to register their employees within specific time periods during the implementation period with the assistance of dedicated staff. Staggered registration would limit the number of originators registering at any one time and spread the registration of originators throughout the implementation period. Although such a schedule mostly would benefit those institutions with the largest number of mortgage loan originators, it also should enable the Registry to accommodate all registrations in a more timely and efficient manner, thereby benefiting all institutions. Accordingly, the Agencies will work with CSBS and SRR to develop a staggered registration schedule for institutions, in particular those that are estimated to have a large number of mortgage loan originators subject to Federal registration, that request such a schedule. This staggered process would occur within the 180-day implementation period in order not to delay the registration of mortgage loan originators and the ability of consumers to fully utilize the Registry. Because institutions that request a staggered registration process would have a dedicated period during which to register within the 180-day period, registration burdens may be eased for these institutions, lessening their need for the full 180-day registration period. Details on this staggered approach will be provided to applicable institutions when they have been finalized and may include the availability of this dedicated staff prior to the start of the registration period.

Special rule for previously registered employees. Under paragraph (a)(4) of § __.103 of the proposed and final rule, properly registered or licensed mortgage loan originators would not have to register again with the Registry when they change employment by moving from one Agency-regulated institution to another or from a State-regulated institution to an Agency-regulated institution, regardless of whether the change in employment is made voluntarily, through an acquisition or merger of the employee's prior employer, or through a reorganization where previously State-licensed mortgage loan originators become subject to the registration requirements of Agency-regulated institutions. Instead, the employee and employing institution need only update information in the Registry and complete the required authorizations and attestation.

Specifically, proposed paragraph (a)(4) of § __.103 provided that if a new employee of an Agency-regulated institution had previously registered with, and obtained a unique identifier from, the Registry prior to becoming an employee of that institution and has maintained that registration (or license, if previously employed by a non-Agency-regulated institution), the registration requirements of this final rule are deemed to be met provided that: (1) The employee's employment information in the Registry is updated and the employee has completed the required authorizations and attestation; (2) new fingerprints of the employee are provided to the Registry for a background check, except in the case of mergers, acquisitions or reorganizations; (3) information concerning the new employing institution is provided to the Registry pursuant to § __.103(e)(1)(i), to the extent the institution has not previously met these requirements, and § __.103(e)(2)(i);[40] and (4) the registration is maintained pursuant to the requirements of §§ __.103(b) and (e)(1)(ii) as of the date that the employee becomes employed by the institution.

Some commenters requested that the Agencies reduce these requirements in order to further facilitate the movement of employees from one institution to another and prevent unnecessary interruption of mortgage origination activity. However, the Agencies believe that the current provision adequately reduces regulatory burden on Agency-regulated institutions as well as the residential mortgage industry when registered mortgage loan originators change employers and will allow a mortgage origination transaction in process at the time of the employment change to proceed smoothly. It requires less than what would be needed to

[40] These provisions require: The institution's name; main office address; IRS Employer Tax Identification Number; Research Statistics Supervision Discount (RSSD) number; identification of the institution's primary Federal regulator; contact information for individuals at the institution for Registry purposes; applicable subsidiary information, and confirmation that it employs the registrant. Information regarding an institution's RSSD number is available from the Board.

complete a new registration and requires only that information necessary to update the employee's registration and confirm the identity of the originator and the employer, thereby preventing fraudulent information from being submitted to the Registry. However, we have amended § __.103(a)(4)(i)(B) to provide that new fingerprints are not required to be submitted, pursuant to § __.103(d)(1)(ix), if the registered loan originator has fingerprints on file with the Registry that are less than three years old. The Registry will use these existing prints for purposes of the background check. This three-year age limit is consistent with the procedures to be used by SRR for mortgage loan originators licensed by a State. We note that, as proposed, the final rule does not require fingerprints or a new background check when the change in employers is due to an acquisition, merger, or reorganization because these transactions carry a lower risk of fraud and identity theft. The Agencies note that institutions should still conduct prudent screening of prospective employees to confirm their identities.

In response to a comment, the Agencies note that paragraph (a)(4) of § __.103 applies when an employee of an Agency-regulated institution becomes an employee of another Agency-regulated institution, regardless of whether the entities are affiliated. Similarly, when an employee of a subsidiary of an Agency-regulated institution becomes an employee of the institution, the requirements of § __.103 apply.

In order to reduce regulatory burden and to prevent an interruption in mortgage origination activity, the proposed § __.103(a)(4)(ii) provided a 60-day grace period to comply with the § __.103(a)(4)(i) requirements when a registered mortgage loan originator becomes an employee of an Agency-regulated institution as a result of an acquisition, merger, or reorganization. Some commenters agreed that this 60-day grace period is appropriate and provides the proper balance between implementing the purpose of the S.A.F.E. Act and protecting consumers. Other commenters, however, requested that this period be extended to 90 or 180 days due to the complexity and protracted nature of the merger and acquisition process. Some commenters also requested that a 60-day grace period apply to all changes in employment, regardless of whether the change is the result of a merger or acquisition transaction.

Final § __.103(a)(4)(ii) retains the proposed 60-day grace period for a change in employers due to acquisitions, mergers, or reorganizations. The Agencies find that 60 days is an adequate time for institutions and their employees to update registrations in the case of these transactions and agree with the commenters who stated that this time period balances the purposes of the S.A.F.E. Act and consumer protection.

Additionally, the Agencies find that a grace period is not necessary when a mortgage loan originator changes employers for other reasons. This situation does not raise the same compliance burden as does an acquisition, merger, or reorganization, in which a large number of employees are switching employers at the same time. Therefore, as proposed, the final rule requires that these registered mortgage loan originators comply with the requirements of § __.103(a)(4) before they may originate residential mortgage loans for their new employer.

Another commenter requested that the Agencies permit an employer to submit one update concerning all affected employees in the case of an acquisition, merger, or reorganization, rather than having each individual employee submit what is largely identical information about their change in employer. The Agencies agree that this approach would reduce burden for the employee, institution, and the Registry. We specifically have instructed CSBS and SRR to develop a process for these transactions that would allow the bulk transfer of business location and contact information for all mortgage loan originators from one institution to another. However, each individual employee still must complete the authorization and attestation for their own updated registration record.

The Agencies adopt proposed § __.103(a)(4) with the addition of the language discussed above related to fingerprints in § __.103(a)(4)(i)(B). The Agencies also have modified § __.103(a)(4) to clarify that an employee of a bank who has been properly registered or licensed as a mortgage loan originator need only update information in the Registry, and complete the required authorizations and attestation, whether that employee is a new employee of the Agency-regulated institution or becomes subject to this final rule while an employee of the institution.

The Agencies note that the registration of a mortgage loan originator who leaves any employer will be recorded as inactive in the Registry until he or she is hired by another entity, his or her record is updated in accordance with the final rule's requirements, and the new employer acknowledges employing the mortgage loan originator through the Registry. The individual will be prohibited from acting as a mortgage loan originator at an Agency-regulated institution until such time as the registration is reactivated, unless covered by the 60-day grace period for acquisitions, mergers, and reorganizations.

Maintaining Registration. Under proposed § __.103(b)(1)(i), a registered mortgage loan originator must renew his or her registration with the Registry during the annual renewal period, November 1 through December 31 of each year. To renew, the employee must confirm that the information previously submitted to the Registry remains accurate and complete, updating any information as appropriate. Any registration that is not renewed during this period will become inactive, and the individual will be prohibited from acting as a mortgage loan originator at an Agency-regulated institution until such time as the registration requirements are met. However, an individual who fails to update information during this period may renew his or her registration at any time and does not need to wait until the start of the next annual renewal period. Inactive mortgage loan originators will not be assigned a new unique identifier if they reactivate their registration.

Some commenters opposed the requirement to renew registrations annually as overly burdensome and unnecessary. Some suggested alternatively that a registration remain valid until there is a change in employment status or other change that requires an update of database information. Others recommended that the renewal be every two, three, or five years, or based on the experience of the originator. The Agencies understand that an annual renewal process requires an expenditure of time and resources by individual originators and their employing Agency-regulated institutions. However, section 1504 of the S.A.F.E. Act (12 U.S.C. 5103), requires that mortgage loan originators maintain their registration annually. Therefore, the Agencies can not eliminate, or lengthen, the time between renewals. For this reason, the Agencies adopt § __.103(b)(1)(i) as proposed without revision. We note that the automated processing of annual renewals, as more fully described below, could lessen the impact on the resources needed for these renewals.

One commenter suggested that the final rule not require a mortgage loan originator to renew his or her

registration during this annual renewal period if registration was made less than six months prior to the end of the renewal period. The Agencies believe this change is reasonable and within the scope of the S.A.F.E. Act. We have amended the final rule accordingly by adding new paragraph (b)(3) to final § __.103. However, a mortgage loan originator still is required to update his or her registration during this six month period if any information provided to the Registry at the time of registration changes, pursuant to § __ .103(b)(1)(ii), described below.

In addition to the annual renewal, proposed § __.103(b)(1)(ii) provided that a registration must be updated within 30 days of the occurrence of any of the following events: (1) A change in the employee's name; (2) the registrant ceases to be an employee of the institution; or (3) any of the employee's responses to the information required for registration pursuant to paragraphs (d)(1)(iii) through (viii) of § __.103 become inaccurate.

A few commenters requested that the Agencies increase this 30-day period for updates to 60 or 90 days. The Agencies believe that the Registry should be updated as soon as possible and therefore have not adopted this requested change. Updates are needed on only a case-by-case basis and therefore, unlike in the case of mergers and acquisitions, should not be burdensome to registrants or employing institutions. In addition, the 30-day updating period is consistent with what is required currently for State-licensed mortgage loan originators. Therefore, final § __.103(b)(1)(ii) includes a 30-day update requirement, as proposed.

Proposed § __.103(b) also required any employee who registers with the Registry to maintain his or her registration unless the employee is no longer a mortgage loan originator. As a result of this provision, once an employee registers as a loan originator with the Registry, the employee will be required to continue this registration until he or she is no longer engaged in the activity of a mortgage loan originator, even if, in any subsequent 12-month period, the employee originates fewer mortgage loans than the number specified in the *de minimis* exception provision. The purpose of this requirement is to prevent the creation of a timing loophole that could allow mortgage loan originators to avoid registration requirements.

As indicated in the proposal's **SUPPLEMENTARY INFORMATION** section, the Agencies have considered whether the rule should provide for a temporary waiver of the rule's registration requirements or for extension of the initial registration or renewal period, in case of emergency, system malfunction, or other event beyond the control of the Agency-regulated institution or the mortgage loan originator. One commenter expressed support for this concept but noted that such an exception should be narrowly drawn so as not to create a loophole in the registration requirement and suggested that each Agency select an official who has authority to designate an emergency deadline extension for good cause. Another commenter also supported a waiver when events beyond the institution's control made timely registration impossible.

The Agencies agree that on rare occasions there may be exigent circumstances or situations when the Agencies may deem it appropriate to temporarily waive or suspend the requirements of this rule or extend the initial registration or renewal periods. The Agencies do not believe, however, that the final rule must include specific language to effectuate such waivers, suspensions, or extensions. As is the Agencies' practice in other supervisory contexts, if a situation arises that warrants such an action, such as a serious interruption of communication, computer, or fingerprint collection systems at one or more institution(s) caused by circumstances beyond the institution's control, or an extended interruption of Registry service, the Agencies will announce the availability of waivers, suspensions, or extensions of time. In addition, Agency-regulated institutions may contact their regulators to discuss possible relief on a case-by-case basis.

Effective date of registrations and renewals. Proposed § __.103(c) provided that a registration is effective on the date that the registrant receives notification from the Registry that all employee and institution information required by paragraphs (d) and (e) of § __.103 has been submitted and the registration is complete, and that a renewal or update of a registration is effective on the date the registrant receives notification from the Registry that all applicable information required by paragraphs (b) and (e) of § __.103 has been submitted and the renewal or update is complete.

We have made two changes to this provision in the final rule. Because the Registry is not technically capable of determining when a registrant actually receives its notification that the registration is complete, we have amended this provision to indicate that a registration is effective when the Registry transmits notification to the registrant that the registrant is registered. In addition, we have streamlined this provision to clarify that this notification of registration completes the registration process. We have made similar changes to § __.103(c)(2) regarding renewals and updates.

We note that, except as provided by the 180-day implementation period in § __.103(a)(3) or the 60-day grace period provided in § __.103(a)(4), an employee must not engage in residential mortgage loan origination activity if his or her registration is not yet effective or has not been renewed or updated pursuant to this rule.

A number of commenters requested further clarification of this effective date, and specifically requested that the effectiveness of the registration not be delayed for the processing of a registrant's fingerprints or receipt of a criminal background check. The Agencies did not intend to delay the effective date for fingerprint or criminal background check processing. There is no requirement for the processing of these fingerprints or the completion of a background check before a registration becomes effective. Nor, as indicated previously in this **SUPPLEMENTARY INFORMATION** section, is the effectiveness of a registration contingent on Agency or Registry review or approval of the information submitted to the Registry. Pursuant to the rule, in order to register, the information required by § __.103(d) and (e) must be submitted, and, in order to renew or update a registration, the information required by § __.103(b) must be submitted. The Registry will conduct a completeness check of the information submitted by or on behalf of the registrant. At the time the Registry determines all required information has been submitted and all Registry requirements have been met, such as payment of applicable fees charged by the Registry, it will transmit notification electronically to the registrant that he or she is registered or that his or her registration is renewed or updated, as applicable. The employing institution will be responsible for reviewing the criminal history background report once it is completed, and taking any necessary action based on the findings of this report, pursuant to the institution's policies and procedures, as required by this final rule. We note that the registrant will obtain a unique identifier during the registration process and not when the registration is complete.

Section 1510 of the S.A.F.E. Act (12 U.S.C. 5109), expressly authorizes the Registry to "charge reasonable fees to cover the costs of maintaining and providing access to information from

the [Registry], to the extent that such fees are not charged to consumers for access to such [Registry]." We anticipate that the Registry will charge fees for registration, change in employment, renewal, and fingerprint processing and background checks. Although some commenters specifically requested information on the anticipated costs associated with registering with the Registry, the Agencies are at this time unable to provide this information as the fees have yet to be established by CSBS and SRR. The Agencies are consulting with the CSBS and SRR regarding the fees that the Registry expects to impose. One commenter specifically asked the Agencies to grant Agency-regulated institutions the opportunity to comment on fees. CSBS has indicated that it intends to provide an opportunity for the public to comment on these fees, and any future adjustments to such fees, before their imposition on Federal registrants and/or their employing institutions.[41]

Required employee information. Section 1507(a)(2) of the S.A.F.E. Act (12 U.S.C. 5106(a)(2)) specifically requires, in connection with the registration of a mortgage loan originator, the Agencies to furnish, or cause to be furnished, to the Registry information concerning an employee's identity, including fingerprints and personal history and experience. Final § __.103(d) implements this requirement and lists the categories of information that mortgage loan originators, or the employing Agency-regulated institution on behalf of the mortgage loan originator, will be required to submit to the Registry. Agency-regulated institutions may select one or more individuals to submit the employee information required by this paragraph to the Registry on behalf of each of their mortgage loan originators to facilitate the registration process. At the request of commenters, we have added a new paragraph (d)(3) to the final rule that specifically permits institutions to select such individuals to submit employee information on behalf of mortgage loan originators employed by the institution. The final rule specifically prohibits these selected individuals from acting as mortgage loan originators. We note that regardless of the manner that the information is provided to the Registry, the registering employee, and not the employing institution or other employees, must complete the authorizations and attestation required by § __.103(d)(2), and described below, for the registration to be complete.

Under proposed § __.103(d), the employing Agency-regulated institution would have been required to have its registering employees submit, or to submit on behalf of its employees, information regarding the employee's identity (name and former names. social security number, gender, and date and place of birth) and home and business contact information; date the employee became an employee of the Agency-regulated institution; financial services-related employment and financial history for the past 10 years; criminal history involving certain felonies and misdemeanors; history of financial services-related civil actions, arbitrations and regulatory and disciplinary actions or orders; financial services-related professional license revocations or suspensions; voluntary or involuntary employment terminations based on violations of law or industry standards of conduct; and certain actions listed above that are pending against the employee. This information is similar to that required by the current NMLS data collection form for mortgage loan originators regulated by a State, form MU4. The information applies to employees but includes responsive information prior to their employment at the Agency-regulated institution.

The Agencies received many comments on this provision. Although some supported the proposed list of information to be submitted to the Registry, many others requested that the Agencies narrow this list, stating that the extent of personal information required by the proposal is overbroad, intrusive, and burdensome. Commenters also requested that we clarify the information that is required to be submitted.

Based on the comments received, the Agencies have carefully reviewed this list and agree that some of this information is more relevant for licensing purposes than for registration. In particular, we found that the collection of some of this information, which would not be publicly available to consumers, is not necessary to implement the purposes and requirements set forth in section 1502 of the S.A.F.E. Act (12 U.S.C. 5101).

Based on this review, we have deleted proposed § __.103(d)(1)(iii) from the final rule, which would have required submission of the registrant's financial history information (such as bankruptcies, unsatisfied judgments, liens, paid-out bonds, *etc.*). This information would not be available to consumers under this rulemaking and is not required for registration by the statute. It therefore does not further the objectives of the S.A.F.E. Act.

In addition, the submission of employment termination information to the Registry is more appropriate for the purpose of licensing, as a State regulator would use this information to make a decision on licensure, conducting further inquiry, if appropriate. Because this sensitive information would not be made public, we have deleted proposed § __.103(d)(1)(x), which required submission of information regarding employment terminations to the Registry, from the final rule.

We also have not included in the final rule the requirement to provide information on pending matters. Because these matters are not final actions, requiring this information would effectively penalize mortgage loan originators before a decision had been rendered. We note that if a pending action does become final, it must be reported to the Registry and made publicly available within 30 days, pursuant to § __.103(b)(1)(ii).

The Agencies also have revised the requirement in proposed § __.103(d)(1)(iv) to provide information on the mortgage loan originator's felony and misdemeanor criminal history. The proposal provided that the registrant supply information regarding felony convictions or other final criminal actions involving a felony against the employee or organizations controlled by the employee; or misdemeanor convictions or other final misdemeanor actions against the employee or organizations controlled by the employee involving financial services, a financial services-related business, dishonesty, or breach of trust. After further review, the Agencies found the proposal's language too broad, and as a result, would have required the registrant to disclose convictions that are not directly relevant to his or her work as a mortgage loan originator. As such, this information is not necessary to meet the purposes or requirements of the S.A.F.E. Act.

Final and redesignated § __.103(d)(1)(iii) removes the distinction between felonies and misdemeanors and narrows the category of final actions an employee must disclose to the Registry to final criminal actions that involve dishonesty or breach of trust or money laundering. In addition, to fully encompass all relevant final criminal actions, the final rule amends this category of information to include an agreement to enter into a pretrial diversion or similar program in

[41] The agencies note that the NMLS currently charges fees for the licensing of State originators; however, fees for Federal registrants and their employing Agency-regulated institutions may differ from those currently imposed on State licensees. *See* the NMLS Web site at *http://www.stateregulatoryregistry.org* for information regarding fees imposed on State originators.

connection with the prosecution for such offense.[42] This language derives from section 19(a)(1) of the FDI Act (12 U.S.C. 1829), which, in general, prohibits the participation of individuals convicted of such offenses from participating in the affairs of an insured depository institution. The Agencies intend to rely on FDIC rules and guidance interpreting section 19(a)(1) of the FDI Act with respect to the interpretation of criminal offenses covered under section 19 of the FDI Act.[43] Therefore, amending the proposal to include this language in the final rule provides clearer guidance to originators and their Agency-regulated institution employers of the types of criminal offenses required to be disclosed. For example, the FDIC excludes expunged, sealed and juvenile offenses and, therefore, the Agencies would not expect this information to be provided to the Registry.[44] The final rule also would not require acquittals to be reported.

The Agencies find the remaining information required by the proposal to be submitted to the Registry relevant to the registration process and the purposes and requirements of the S.A.F.E. Act. Section 1507(a)(2) of the S.A.F.E. Act (12 U.S.C. 5106(a)(2)) specifically requires that information regarding the registrant's identity, including personal history and experience, be furnished to the Registry. Identifying information, such as name (and any other names used, such as a nickname, full legal name, or maiden name), home address, address of principal business location and business contact information (business phone number and e-mail address) and the registrant's prior financial services-related employment history (not all of which will be made public) is necessary to meet this requirement. In addition to this information, the registrant's social security number, gender, and date and place of birth are necessary to conduct the criminal history background check required by section 1507(a)(2)(A) of the S.A.F.E. Act (12 U.S.C. 5106(a)(2)(A)). Likewise, the required information concerning final criminal actions (as amended), financial services-related civil judicial actions, publicly-adjudicated regulatory and disciplinary actions or orders, financial services-related professional license revocations or suspensions, and financial services-related customer-initiated arbitration and civil actions will be made public on the Registry, and, therefore, further the purpose of the S.A.F.E. Act to provide consumers with easily accessible information on disciplinary and enforcement actions against the originator. The Agencies therefore adopt the final rule with the requirement to provide this information to the Registry.

Pursuant to section 1507(a)(2)(A) of the S.A.F.E. Act (12 U.S.C. 5106(a)(2)(A)), proposed § __.103(d)(xii) (redesignated as § __.103(d)(ix) in the final rule) also required employees to provide fingerprints, in digital form if practicable, to the Registry for submission to the FBI and any governmental agency or entity authorized to receive such information for a State and national criminal history background check. The proposal permitted the use of fingerprints currently on file with the employing Agency-regulated institution if taken less than three years prior to the employee's registration with the Registry.

This requirement elicited many comments. Some commenters requested that the Agencies permit institutions to continue accessing existing fingerprint channels recognized and supported by existing relations with the FBI. Some commenters also suggested that the final rule should deem background checks conducted by the institution during the hiring process as compliant with the S.A.F.E. Act's fingerprint and background check requirement. Commenters also requested that the final rule permit the submission of fingerprints collected 10 or 15 years prior to registration. Many of the commenters argued that an age limit is unnecessary as fingerprints do not change over time. In addition, commenters noted that allowing the use of existing fingerprints, no matter when collected, will reduce registration costs and delays.

The S.A.F.E. Act specifically requires fingerprints to be furnished to the Registry for purposes of submission to the FBI, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check.[45] The S.A.F.E. Act does not specifically require certain persons or entities to furnish these fingerprints, nor prohibit other entities from furnishing fingerprints to the Registry. However, the FBI only will accept fingerprints from entities authorized as channelers of this information.

In order to ensure that fingerprints are up-to-date, we have amended the redesignated § __.103(d)(1)(ix) to provide that fingerprints that are less than three years old may be used to satisfy the requirement to furnish fingerprints to the Registry. As indicated previously, this three-year age limit is consistent with the procedures to be used by SRR for mortgage loan originators licensed by a State. Institutions should consult their existing channelers regarding the furnishing of fingerprints that are less than three years old to the Registry.

CSBS and SRR are currently modifying the NMLS to act as a channeler for fingerprints of State license applicants, pursuant to the S.A.F.E. Act, and Federal registrants may use this same fingerprinting process when the NMLS is modified to accept Federal registrations.[46] The Agencies anticipate that CSBS and SRR will provide guidance to Agency-regulated institutions and their mortgage loan originators on the availability and details of this fingerprint process. CSBS and SRR intend that this fingerprinting process will be convenient and efficient for both State licensees and Federal registrants.[47]

Some commenters asked the Agencies to clarify whether the Registry may collect fingerprints and submit a request for a background check before the Agency-regulated institution employs a mortgage loan originator rather than waiting until after that individual is hired to submit fingerprints to the Registry. The Agencies have no objection to the Registry processing a background check just prior to the employment of a mortgage loan originator, should the Registry provide this service, and believe this could satisfy the requirements of the rule.

Some commenters also expressed the view that the Registry should have the capability to accept fingerprints in both

[42] An agreement to enter into a pretrial diversion or similar program is defined by the FDIC as a suspension or eventual dismissal of charges or criminal prosecution upon agreement of the accused to treatment, rehabilitation, restitution, or other noncriminal or nonpunative alternatives. FDIC Statement of Policy for Section 19 of the FDIC Act, 63 FR 66177 (Dec. 1, 1998).

[43] *See Id.* and 12 CFR 303.220–223.

[44] *Id.*

[45] Section 1507(a)(2)(A) of the S.A.F.E. Act (12 U.S.C. 5106(a)(2)(A)). The Agencies note that, in the event that a mortgage loan originator is unable to provide fingerprints due to a physical condition, he or she should provide identifying information to the Registry consistent with FBI protocols.

[46] Further information on the Registry's fingerprint and background check procedures can be found on the Registry's Web site at *http://www.stateregulatoryregistry.org/NMLS/*.

[47] SRR plans to contract with a nationwide vendor to take the fingerprints and forward them to the Registry, which will then obtain the criminal history background check based on these fingerprints. According to plans, this vendor will have locations throughout the country, may be made available on-site at institutions, and will provide a mail-in option for mortgage loan originators unable to provide their fingerprints in person.

paper and digital form. As in the proposed rule, the final rule does not require digital fingerprints, but does encourage the use of digital fingerprint submissions. If digital fingerprints are not available, the Registry will accept fingerprint cards, and will convert these cards to a digital format. The Agencies note that the rule's authorization to submit fingerprints in paper form is intended to assist smaller institutions for which compliance with a digital fingerprint requirement may not be feasible.

Employee authorization and attestation. Paragraph (d)(2)(i) of §__.103 requires the employee to provide authorization for the Registry and the employing Agency-regulated institution to obtain information related to sanctions or findings in any administrative, civil, or criminal action, to which the employee is a party, and, in paragraph (d)(2)(ii) of this section, to attest to the correctness of all information submitted to the Registry pursuant to paragraph (d) of this section.

In order to provide relevant information to consumers and to implement the purposes of the S.A.F.E. Act, paragraph (d)(2)(iii) requires the employee to authorize the Registry to make available to the public the information required to be submitted to the Registry pursuant to §__.103(d)(1)(i)(A) and (C) and (d)(1)(ii) through (viii) (his or her name, other names used, name of current employer(s), current principal business location(s) and business contact information, 10 years of relevant employment history, and publicly adjudicated disciplinary and enforcement actions and arbitrations against the employee).

Although this rulemaking permits the employing institution or other institution employees to submit the information required by §__.103(d)(1) to the Registry on behalf of the registering employee, the employee, and not the employing institution or its other employees, must complete the attestation and authorizations required by §__.103(d)(2) for the registration to be complete. This task may not be delegated because it is necessary for the Registry to authenticate the employee's information.

The Registry plans to make this information available to the public in two phases. The first phase, implemented at the end of the initial registration period, would provide for public accessibility of the employee's name; other names used; name of current employer(s), current principal business location(s) and business contact information; and employment history. The remaining categories of information (publicly adjudicated disciplinary and enforcement actions and arbitrations against the employee) would be made public at a later date, once the Registry, in consultation with the Agencies, has designed and implemented a system through which the registrant may provide additional explanatory information to accompany a positive response to any of the disclosure questions regarding criminal history or the other information requested in paragraphs (d)(1)(iii) through (viii). The Agencies note that once the Registry makes this enhancement, registered mortgage loan originators will be able to provide this explanatory information at any time, including during the annual renewal process, and that this explanatory language may be made public. Relevant nonpublic information submitted to the Registry will be only accessible to the Agencies and State regulators of mortgage originators, as appropriate, and the submitting mortgage loan originator and his or her employing institution.[48]

The Agencies received many comments on the public availability of personal information, particularly on how the Registry will store and prevent the unauthorized use of this personal information, and how nonpublic personal information will be appropriately protected. One commenter specifically stated that the final rule should take appropriate measures to ensure that the electronic submissions to the Registry are properly encrypted, authorized, and authenticated, and that the Registry complies with the FBI Criminal Justice Information Services Security Policy (CJIS Security Policy).[49]

The Agencies are well aware of the security concerns associated with providing personal information to the Registry and are contracting with SRR to ensure appropriate data protection elements are incorporated within the Registry to ensure compliance with the requirements of the Federal Information Security Management Act (FISMA) of 2002, PL 107–347; the CJIS Security Policy; and the related Security and Management Control Outsourcing Standard.[50] FISMA requires each Federal agency to develop, document, and implement an agency-wide program to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source. Specifically, FISMA directed the promulgation of Federal standards for: (1) The security categorization of Federal information and information systems based on the objectives of providing appropriate levels of information security according to a range of risk levels; and (2) minimum security requirements for information and information systems in each such category.[51]

As a channeler and outsourcer of fingerprints, the FBI requires the Registry to comply with its CJIS Security Policy. The CJIS provides the minimum level of information technology security requirements determined acceptable for the transmission, processing, and storage of the nation's criminal justice information systems data. The purpose of this policy is to establish uniformity and consistency in safeguarding criminal justice information security data which is accessed via networks throughout the Federal, State, and local user community. However, this policy does not prohibit more stringent security policies.

The requirements for protecting the privacy and security of the personal information obtained from employees of Agency-regulated institutions, and the confidential information obtained from the institutions themselves, are essentially similar whether a particular mortgage loan originator is State licensed or Federally registered. SRR and CSBS will institute security protocols to protect the privacy and security of such information.

The Agencies adopt §__.103(d)(2) as proposed, with the following conforming and clarifying changes.

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[48] SRR plans to make this *public* information stored on the Registry available on an aggregate basis to interested parties for compliance purposes.

[49] CJISD–iTS–DOC–08140–4.5, December 2008.

[50] *See http://www.fbi.gov/hq/cjisd/web%20poge/pdf/05132009_outsourcing_standord.pdf.*

[51] *See* the National Institute of Standards and Technology (NIST) publications FIPS Pub 200, *Mininum Security Requirements for Federol Informotion ond Informotion Systems*, March 2006 and NIST Special Publication 800–53, *Recommended Security Controls for Federal Information Systems*, as amended. These standards specify minimum management, operational, and technical safeguards in 17 security-related areas needed to protect the confidentiality, integrity, and availability of Federal information systems and the information processed, stored, and transmitted by those systems. These security-related areas are: (1) Access control; (2) awareness and training; (3) audit and accountability; (4) certification, accreditation, and security assessments; (5) configuration management; (6) contingency planning; (7) identification and authentication; (8) incident response; (9) maintenance; (10) media protection; (11) physical and environmental protection; (12) planning; (13) personnel security; (14) risk assessment; (15) systems and services acquisition; (16) system and communications protection; and (17) system and information integrity.

First, we have removed pending disciplinary and enforcement actions and arbitrations against the employee from the list of information the employee must authorize the Registry to make available to the public to conform with our amendment to § __.103(d)(1). Second, we have amended § __.103(d)(2)(ii) to require a registrant to attest to any update of their registration, in addition to their initial and renewal registrations. This requirement had inadvertently been left out of the proposed rule. Finally, we have added language to clarify that neither the employing institution, nor any of its other employees, may fulfill these attestation and authorization requirements on behalf of the registering employee.

We also have added a new paragraph (d)(3) to clarify that an Agency-regulated institution may identify an employee or employees of the bank who may submit the employee information required by paragraph (d)(1)(i) to the Registry on behalf of the institution's employees, provided that this individual, and any employee delegated this authority, does not act as a mortgage loan originator, consistent with § __.103(e)(1)(i)(F). In addition, as more fully explained below, this new paragraph specifically authorizes an institution to submit to the Registry some or all of the employee information required by paragraph (d)(1)(i) and the institution's information required by § __.103(e)(2) for multiple employees in bulk through batch processing in a format to be specified by the Registry, to the extent such batch processing is made available by the Registry.

Required Agency-regulated institution information. The Agencies adopt proposed § __.103(e)(1) with the following amendments, discussed below.

Paragraph (e)(1) of § __.103 of the final rule requires the employing Agency-regulated institution to submit certain information to the Registry as a base record in connection with the registration of one or more mortgage loan originators. Specifically, the Agency-regulated institution must provide its name; main office address; business contact information, such as business phone number or e-mail address (not required by the proposed rule); primary Federal regulator; Employer Tax Identification Number (EIN) issued by the Internal Revenue Service; primary point of contact information; and contact information for "system administrators."

System administrators will have the authority to enter data required in paragraph (e) of this section on the Registry and will be responsible for keeping institution information and the list of employees registered with the Registry current. These individuals, however, may not act as mortgage loan originators. The Agencies recognize that some small institutions may not be able to comply with this latter requirement because all of their staff may be registered mortgage loan originators. Therefore, we have amended this provision to exempt institutions with 10 or fewer full time equivalent employees from the requirement that system administrators do not act as mortgage loan originators. However, this exemption does not apply to a subsidiary of an Agency-regulated institution as the staff at the parent institution could perform this function. In the Agencies' experience, institutions with more than 10 full time equivalent employees generally have sufficient staff resources to support the segregation of these functions. The system administrators may delegate their authority and assign as many additional system users as necessary to comply with the registration requirements of the S.A.F.E. Act and the final rule, provided the delegated administrators meet this paragraph's requirements. While the primary point of contact also can be one of the institution's system administrators, the institution's management is responsible for ensuring proper oversight of the system administrator's activities.

In addition, paragraph (e)(1)(i)(C) of § __.103 requires an Agency-regulated institution to provide its Research Statistics Supervision Discount (RSSD) number as identifying data for validating the base record. The RSSD database is maintained by the Board. The Agencies will provide the Registry with an extract of the Board's database, indexed by RSSD number, to facilitate an Agency-regulated institution's authorized access to the Registry and its establishment of a new base record. Upon receiving the information for a new base record from an Agency-regulated institution, the Registry will confirm the information by comparing the application with RSSD data supplied by the Agencies. The Agencies will establish a mechanism by which Agency-regulated institutions that do not have an RSSD number will be added to the RSSD database.

If the institution is a subsidiary of an Agency-regulated institution, the final rule requires the subsidiary to indicate that it is a subsidiary of the parent and to provide its parent institution's RSSD number in addition to its own RSSD number, if it has one. It is not required to obtain its own RSSD number. The proposal had required that the subsidiary provide its parent's name. We have revised this provision in the final rule to require the subsidiary instead to provide its parent's RSSD number, which is a more accurate method of identifying the parent institution than by name.

Some Farm Credit System-affiliated commenters requested that the Agencies consider using the FCA's existing identification system as an alternative for the RSSD number for FCS institutions. The Agencies decline to make this modification. Validation of Agency-regulated institutions will be most efficient and complete if all institutions can be identified through a single identification system. The FCA will provide FCS institutions with information on how to obtain an RSSD number for the purposes of this rulemaking. The Agencies received no other significant comments on § __.103(e).

We also have amended proposed § __.103(e)(1) to require system administrators to follow NMLS protocols to verify their own identity and to attest that they have the authority to enter data on behalf of the Agency-regulated institution, that the information submitted pursuant to paragraph (e) is correct, and that the Agency-regulated institution will keep the information required by paragraph (e) current and will file accurate supplementary information on a timely basis. In addition, we have amended this paragraph to require institutions to renew the information they have submitted to the Registry pursuant to § __.103(e) on an annual basis. We have added these two requirements to conform to system protocols identified by CSBS and SRR.

As in the proposal, renumbered paragraph (e)(1)(iii) of § __.103 requires an Agency-regulated institution to update any information it has submitted within 30 days of the date that the information becomes inaccurate.

As proposed, § __.103(e)(2) of the final rule requires an Agency-regulated institution to provide information to the Registry for each employee who acts as a mortgage loan originator. The Agency-regulated institution must: (1) Confirm that it employs the registrant, after all the information required by paragraph (d) of this section has been submitted to the Registry; and (2) within 30 days of the date the registrant ceases to be an employee of the institution, provide notification that it no longer employs the registrant and the date the registrant ceased being an employee. This information will link the registering mortgage loan originator to the Agency-

regulated institution in order to confirm that the registration of the employee is valid and legitimate. The Agencies note that the Registry's system protocols will not permit the Agency-regulated institution to confirm that it employs the registrant unless all of the employee's information required by paragraph (d) of this section has been submitted to the Registry and the employee has attested to the accuracy of the information. As indicated below, batch processing of certain information for multiple employees will likely be available to facilitate compliance with this provision.

Batch Processing of Registrations. The **SUPPLEMENTARY INFORMATION** section of the proposed rule sought comment on whether to permit a "batch" process for Agency-regulated institutions to submit to the Registry, in bulk, some or all of the required employee and institution information as a way to mitigate the initial and ongoing registration burden on Agency-regulated institutions and their employees. Commenters overwhelmingly supported the concept of batch processing, indicating that such a capability would make registration faster, simpler, more efficient, and less costly. They also stated that it would enable them to better control and manage the registration process, pursuant to the policies and procedures required by this rulemaking.

The Agencies agree that some form of batch processing would be helpful for the registration process to run smoothly and efficiently and for all initial registrations to be completed within the 180-day initial registration period. Batch processing would be especially beneficial to larger institutions who must register tens of thousands of employees. The Agencies therefore are working with CSBS and SRR to ensure that the Registry supports the batch processing of large numbers of registrations by Agency-regulated institutions. As indicated above, we have added a new § __.103(d)(3) to specifically permit institutions to submit a portion of the information required by paragraphs (d)(1)(i) and (e)(2) of § __.103 for multiple employees in bulk through batch processing, to the extent such batch processing is made available by the Registry.

Specifically, it is our intent that the Registry will be able to provide Agency-regulated institutions the capability to submit batch registration of a portion of the information for multiple mortgage loan originators and to electronically notify the originators of the need to complete the registration. The Agencies expect the batch file to contain at least enough information to establish a mortgage loan originator record (such as the institution's name and RSSD number and employee name, SSN, and e-mail address). We also expect that the Registry will provide the capability for an Agency-regulated institution to confirm its relationship with mortgage loan originators either individually or in bulk. The Agencies, CSBS, and SRR are in the process of specifying the details and means of this batch processing. Batch processing should be available for institutions at the start of the initial registration period, and we will provide further information on batch processing prior to that time.

Section __.104—Policies and Procedures

Proposed § __.104 required Agency-regulated institutions that employ mortgage loan originators to adopt and follow written policies and procedures designed to ensure compliance with the requirements of the final rule. The proposal stated that the policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the Agency-regulated institution and must, at a minimum, include eight specified provisions.

The Agencies received many comments on these required policies and procedures. Although some supported them, others found the requirement to have detailed written plans for how to comply with the final rule unnecessary and overly burdensome, especially in light of other regulatory requirements imposed on financial institutions. A few commenters suggested that the Agencies develop model guidelines for, or samples of, these policies and procedures to reduce implementation and compliance costs for Agency-regulated institutions and to reduce burden on examiners in monitoring compliance. Commenters also requested further clarification of specific provisions and an explanation as to the reason for the provision.

The Agencies continue to believe that requiring Agency-regulated institutions to establish policies and procedures is an appropriate way to ensure and monitor compliance with this final rule. Appropriate policies and procedures provide an institution and its employees with the expectations of the institution's board and include the specific implementing guidance that is applicable to the activities of that institution. Furthermore, such policies and procedures are necessary to enable Agency examiners to evaluate the effectiveness of institutions' implementation of the S.A.F.E. Act requirements that apply to them. Institutions have the responsibility to adopt policies and procedures appropriate to their operations. The final rule therefore includes a policies and procedures requirement. Comments on specific provisions are addressed below.

First, proposed § __.104(a) required policies and procedures to establish a process for identifying which employees of the institution are required to be registered mortgage loan originators. This provision highlights a basic and necessary action each institution must take to comply with the rulemaking. We did not receive specific substantive comments on this requirement and therefore adopt § __.104(a) as proposed.

Second, proposed § __.104(b) required policies and procedures to require that all employees of the institution who are mortgage loan originators be informed of the registration requirements of the S.A.F.E. Act and the proposed rule and be instructed on how to comply with these requirements and procedures, including registering as a mortgage loan originator prior to engaging in any mortgage loan origination activity. As with the first provision, this action is necessary for Agency-regulated institutions to comply with the rule and facilitates employee compliance. We did not receive substantive comments addressing this requirement and therefore adopt § __.104(b) as proposed.

Third, proposed § __.104(c) required that policies and procedures must establish procedures to comply with the unique identifier requirements in § __.105. Once again, this provision merely reiterates that Agency-regulated institutions must ensure compliance with a requirement of the rulemaking. We received no specific comments on this requirement and therefore adopt it as proposed.

Fourth, proposed § __.104(d) required policies and procedures to establish reasonable procedures for confirming the adequacy and accuracy of employee registrations, including updates and renewals, by comparison with the institution's records. We adopt this provision as proposed. However, to address the many comments on this requirement, the Agencies clarify that they will consider an institution to have reasonable procedures if it confirms the information supplied to the Registry that is in the institution's personnel files. Typically this information would include the employee's identifying information, such as the employee's name; home address; business address and contact information; social security number; gender; date and place of birth; and financial services-related civil actions, arbitrations and regulatory

actions taken against the institution's employee, if any. As noted in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, to comply with this requirement, institutions need only compare the information supplied by the employee to the Registry with the information contained in the institution's own records. The final rule does not require, nor do the Agencies expect, Agency-regulated institutions to obtain private database searches on their employees to confirm employee registration information.

Fifth, proposed § __.104(e) required institutions to establish reasonable procedures and tracking systems for monitoring compliance with registration requirements and procedures. Under this regulatory provision, Agency-regulated institutions will be expected to demonstrate compliance with the registration and renewal requirements of this final rule, such as by maintaining appropriate records. The action required by this provision is one that an institution must take to ensure compliance with the rule and may be done in a number of different ways, such as by using an institution's existing tracking systems. Having received no substantive comments on this requirement, the Agencies adopt it as proposed.

Sixth, proposed § __.104(f) required policies and procedures that provide for periodic independent testing of the Agency-regulated institution's policies and procedures for compliance with the S.A.F.E. Act and the final rule and for such testing to be conducted by institution personnel or by an outside party. This compliance testing is standard procedure for Agency-regulated institutions as part of their internal controls, and we adopt it as proposed with one change. We have clarified that this compliance testing must be done on an annual basis, a necessary internal audit interval.

Seventh, proposed § __.104(g) required policies and procedures to provide for appropriate disciplinary action against any employee who fails to comply with the registration requirements of the S.A.F.E. Act, this rule, or the related policies and procedures of the institution, including prohibiting such employees from acting as mortgage loan originators or other appropriate disciplinary actions. The action required by this provision is one that an institution would need to take to ensure compliance with the rule. Having received no substantive comments on this requirement, we adopt it as proposed.

Finally, proposed § __.104(h) required policies and procedures to establish a process for reviewing the criminal history background reports on employees received from the FBI through the Registry, taking appropriate action consistent with applicable law and rules with respect to these reports, maintaining records of these reports, and documenting any action taken with respect to such employees consistent with applicable recordkeeping requirements, if any. A few commenters requested clarification on this requirement. As noted by other commenters, section 19 of the FDI Act (12 U.S.C. 1829), in general, prohibits insured depository institutions from employing a person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering or has entered into a pretrial diversion or similar program in connection with a prosecution for such offense. Similarly, section 5.65(d) of the Farm Credit Act (12 U.S.C. 2277a–14 (d)), states "[e]xcept with the prior written consent of the Farm Credit Administration, it shall be unlawful for any person convicted of any criminal offense involving dishonesty or a breach of trust to serve as a director, officer, or employee of any System institution." For Federally insured credit unions, NCUA intends to rely upon 12 U.S.C. 1786(i) and 12 CFR 741.3(c). We have revised this provision of the final rule to include references to the appropriate statutory provision.

The Agencies have added a new provision to clarify the responsibilities of Agency-regulated institutions regarding their contracts relating to mortgage loan originations. Institutions must establish procedures designed to ensure that any third party with which it has arrangements related to mortgage loan origination has policies and procedures to comply with the S.A.F.E. Act, including appropriate licensing and/or registration of individuals acting as mortgage loan originators. Agency-regulated institutions should monitor third party entities' compliance with these policies and procedures. This provision will ensure that individuals acting as mortgage loan originators on behalf of an Agency-regulated institution are either State licensed and registered and/or Federally registered.

One commenter requested that the final rule limit an institution's oversight of its employees' compliance with this rulemaking only to those activities of the employee that are within the scope of his or her employment at the institution. It is not our intention to require the institution to enforce the final rule's requirements with respect to activities of its employees that are conducted outside of the employee's scope of employment with that institution and beyond the institution's control, and we have added language to § __.104 to clarify this.

This final rule's requirement to adopt these policies and procedures applies to all Agency-regulated institutions that employ individuals who act as mortgage loan originators, regardless of the application of any *de minimis* exception to their employees. These policies and procedures should be in place at an institution prior to the registration of its employees pursuant to this rule.

Furthermore, the Agencies note that, consistent with the S.A.F.E. Act, the Registry will not screen or approve registrations received from employees of Agency-regulated institutions. Instead, it will be the repository of, and conduit for, information on those employees who are mortgage loan originators at Agency-regulated institutions. Pursuant to §§ __.104(d) and (h) of the final rule, it will be the responsibility of the Agency-regulated institution to establish reasonable procedures for confirming the adequacy and accuracy of employee registrations as well as to establish a process for reviewing any criminal history background reports received from the Registry.

Section __.105—Use of Unique Identifier

The Agencies proposed in § __.105(a) to require an Agency-regulated institution to make the unique identifier(s) of its registered mortgage loan originator(s) available to consumers in a manner and method practicable to the institution. Proposed § __.105(b) required a registered mortgage loan originator to provide the originator's unique identifier to a consumer upon request, before acting as a mortgage loan originator, and through the originator's initial written communication with a consumer, if any.

Although a mortgage loan originator may change his or her name, change employment, or move, the unique identifier assigned to the originator by the Registry at the originator's original registration will remain the same. Once public access to the Registry is fully functional, the unique identifier will enable consumer access to an individual mortgage loan originator's profile stored in the Registry, including the mortgage loan originator's publicly available registration information, any State mortgage licenses held (active or inactive), employment history, and publicly adjudicated disciplinary and enforcement actions. If a mortgage loan originator is simultaneously employed by more than one State or Agency-regulated institution, that information

also will be readily visible to the consumer.

We received a number of comments on this requirement—some noting that it is cumbersome and of limited benefit to the consumer. However, the S.A.F.E. Act requires each mortgage loan originator to obtain a unique identifier to facilitate the electronic tracking of loan originators, and the uniform identification of, and public access to, the employment history and publicly adjudicated disciplinary and enforcement actions against a mortgage loan originator. In order to effectuate this requirement, a mortgage loan originator and the employing institution must ensure that the consumer has access to the originator's unique identifier. This access must be made available early enough in the relationship with the originator to enable the consumer to access the Registry before the consumer commits to the mortgage loan transaction. Because a consumer may not be aware of the Registry, it is important that both the institution and originator make this information available to the consumer, and not only just upon the consumer's request, as suggested by a number of commenters. Therefore, we adopt this requirement as proposed, with one clarifying change described below.

As noted in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, an Agency-regulated institution may comply with the § __.105(a) requirement in a number of ways. For example, the institution may choose to direct consumers to a listing of registered mortgage loan originators and their unique identifiers on its Web site; post this information prominently in a publicly accessible place, such as a branch office lobby or lending office reception area; and/or establish a process to ensure that institution personnel provide the unique identifier of a registered mortgage loan originator to consumers who request it from employees other than the mortgage loan originator. Furthermore, the Agencies intend § __.105(b)(3) of the rule to cover written communication from the originator specifically for his or her customers, such as a commitment letter, good faith estimate or disclosure statement, and not written materials or promotional items distributed by the Agency-regulated institution for general use by its customers. While, this provision does not require institutions to include the unique identifier on loan program descriptions, advertisements, business cards, stationary, notepads, and other similar materials, institutions are not prohibited from doing so. We also clarify that the requirement to provide the unique identifier to the consumer through the originator's initial written communication, if any, applies whether that communication is provided in writing on paper or through electronic means. We have clarified this requirement in the final rule. The Agencies also clarify that the unique identifier may be provided orally, except pursuant to paragraph (b)(3) under which the unique identifier would be provided with the written or electronic communication.

We note that the Board has proposed amendments to 12 CFR 226 (Regulation Z) that would require disclosure of the unique identifier as part of TILA disclosures, which generally must be provided to a borrower within three business days of the residential mortgage loan application and seven business days before consummation of the transaction.[52] In addition, as indicated above, Fannie Mae and Freddie Mac are requiring all mortgage loan applications taken on or after the compliance date for the unique identifier requirement to include the mortgage loan originator's unique identifier.[53] We therefore believe that providing consumers with the originator's unique identifier will not be difficult or burdensome.

Appendix—Examples of Mortgage Loan Originators

The proposed Appendix included a nonexclusive list of examples of activities that fall within or outside the S.A.F.E. Act's definition of a mortgage loan originator. Specifically, the Appendix provided examples of activities that are, and are not, illustrative of taking an application, and offering or negotiating terms of a mortgage loan for compensation or gain. The Agencies note that an employee of an Agency-regulated institution is only subject to the S.A.F.E. Act to the extent that both prongs of the two-part test for acting as a mortgage loan originator are met, and that employees who take applications but do not offer or negotiate terms of a mortgage loan, or vice versa, do not meet the definition. Commenters generally asked the Agencies to provide more detail to the examples and to address whether specific activities of Agency-regulated institution employees would be covered by the two-prong test of a mortgage loan originator.

The Agencies have made several modifications to the examples of taking an application. The modified examples clarify that taking an application occurs when the mortgage loan originator receives information in connection with a request for a mortgage loan that will be used to determine whether the consumer qualifies for a loan. The Agencies note that the information may be provided by another person on behalf of the consumer.

Some commenters questioned whether an employee takes an application if that employee only collects limited data about the consumer or does not decide what data to collect. Another commenter suggested that when an employee collects the limited information about the consumer that is required by an automated loan approval system and quotes interest rates and fees for a specific mortgage loan product as generated by the system, that employee should not be considered to be engaged in taking an application. The Agencies disagree, as the limited information described by the commenter is sufficient to qualify the consumer for a specific mortgage product and terms. The example of taking an application was revised to address the receipt of information to be used to determine whether the consumer qualifies for a mortgage loan, which includes situations where there are limitations on the data collected or on the employee's discretion, as described by the commenter.

Similarly, these commenters also requested clarification as to whether an employee takes an application when the employee enters information into an online application in the process of receiving information from the consumer. The Agencies have provided clarification that the example of taking an application applies even if the employee is inputting information into an online or other automated approval system on behalf of the consumer. The Agencies do not intend this example to address employees who are engaged in the clerical act of inputting information from a loan application into an automated approval system on behalf of a loan officer. Furthermore, contrary to the suggestions of some commenters, the Agencies have clarified that an employee may take an application even if the employee is not engaged in approval of the mortgage loan. An employee also may take an application even if the employee does not take an application fee.

The Agencies also have clarified that, contrary to the suggestion of some commenters, an employee may take an application even if the employee has received the consumer's information indirectly in order to make an offer or negotiate terms of a mortgage loan. An

[52] *See http://www.federalreserve.gov/newsevents/press/bcreg/20090723a.htm.*

[53] *See* footnote 26.

employee may receive the consumer's information indirectly, for example, through another employee, a broker, or an automated system.

The Agencies also have provided further detail regarding the examples of activities that do not constitute taking an application. In response to questions raised by commenters, the Agencies have further clarified that the following activities would not constitute taking an application: (1) Assisting a consumer who is filling out an application by explaining the qualifications or criteria necessary to obtain a mortgage loan product, (2) describing the steps that a consumer would need to take to provide information to be used to determine whether the consumer qualifies for a mortgage loan or otherwise explaining the mortgage loan application process, and (3) responding to an inquiry regarding a prequalified offer that a consumer has received from an Agency-regulated institution, collecting only basic identifying information about the consumer and forwarding the consumer to a mortgage loan originator.

The Agencies also have revised the examples of offering or negotiating terms of a mortgage loan in response to the comments. The Agencies have revised one example to clarify that providing a disclosure of the mortgage loan terms after application pursuant to the Truth in Lending Act is included in presenting a mortgage loan offer. A number of commenters asked the Agencies to modify the examples to carve out employees who are limited in their ability to negotiate or finalize the terms of a mortgage loan. Some commenters posited that employees should be excluded if they only offer the loan rate to a consumer but are not permitted to negotiate the rate, or only quote a rate approved by an automated online system. Similarly, a commenter expressed the view that an employee would not offer or negotiate terms of a mortgage loan if involvement of a loan officer also was necessary to finalize the loan terms or otherwise conclude the mortgage loan approval process. The Agencies believe that many of these situations discussed by the commenters would involve an offer or a negotiation of a loan. Thus the revised examples clarify that presenting a mortgage loan offer to a consumer for acceptance, either verbally or in writing, is offering or negotiating terms of a mortgage loan even if other individuals must complete the mortgage loan process or if only the rate approved by the Agency-regulated institution's loan approval mechanism function for a specific loan product is communicated without authority to negotiate the rate. Similarly, one commenter suggested that an employee does not offer or negotiate terms of a mortgage loan if the employee does not lock the rate. The Agencies do not agree and declined to address this particular activity in the general example of offering or negotiating terms of a mortgage loan.

The Agencies also have modified and added to the examples of activities that are not offering or negotiating terms of a mortgage loan. Some commenters noted that the S.A.F.E. Act excludes employees who are engaged in administrative and clerical activities. The Agencies have considered this exclusion in formulating the examples of mortgage loan origination. Specifically, with respect to offering and negotiating terms of a mortgage loan, the Agencies have added an example that an employee who communicates on behalf of a mortgage loan originator that a written offer has been sent to a consumer, without providing details of that offer, is not offering or negotiating a loan.

In addition, in response to commenters' requests for more detail, the Agencies have clarified that providing descriptions, in addition to explanations, in response to consumer queries regarding qualification for a specific mortgage loan product or product-related service does not constitute offering or negotiating terms of a mortgage loan. In response to the suggestion of another commenter, the Agencies have provided another new example, specifying that "offer or negotiate" does not include explaining or describing the steps or process that a consumer would need to take in order to obtain a loan offer, including qualifications or criteria that would need to be met without providing guidance specific to the consumer's circumstances.

Some commenters asked whether employees engaged solely in making underwriting decisions with respect to mortgage loans are offering terms of a mortgage loan. These employees, although they do not typically communicate directly with consumers, would appear to fall within the definition of taking an application. The Agencies have added, as an example of an activity that is not offering or negotiating terms of a mortgage loan, making an underwriting decision about whether the consumer qualifies for a loan. An employee engaged solely in this activity would not offer or negotiate terms of a loan, and would not, therefore, meet the two-prong test for acting as a loan originator.

The Agencies, as described previously, understand from many commenters that numerous employees of Agency-regulated institutions are engaged solely in modifying loans, such as those which result in reduced and sustainable payments for a borrower who is in default. The Agencies have provided, as a new example of an activity that is not taking an application, receiving information in connection with a modification to the terms of an existing loan to a borrower as part of the institution's loss mitigation efforts, when the borrower is reasonably likely to default. An employee engaged solely in this activity does not receive a residential mortgage loan application, and would not, therefore, meet the two-prong test for acting as a loan originator. The Agencies note that modifying the terms of an existing loan to a borrower as part of the institution's loss mitigation efforts generally would not constitute acting as a mortgage loan originator for purposes of the S.A.F.E. Act. In addition, one commenter requested that the Agencies clarify that an employee acts as a mortgage loan originator when the employee renews an existing loan at maturity, thereby replacing the old loan with a new loan. The Agencies agree with this commenter.

Finally, one commenter queried whether registration requirements apply to Agency-regulated institution employees who, in addition to a variety of customer service duties, only at times act as a mortgage loan originator and only with respect to a limited number of mortgage loan products. The Agencies note that an employee who meets the two-prong test is acting as a mortgage loan originator, even if that activity is not their primary job duty or the employee may only act as a mortgage loan originator for a limited number of products. As described previously, the Agencies have provided a *de minimis* exception to address employees who act as mortgage loan originators with respect to a small number of mortgage loans. In this light, the Agencies received comments that suggested that an employee would be engaged in offering the terms of a loan only if the employee's compensation was based on the number of loans closed or the employee's engagement in mortgage lending. The Agencies do not agree with this suggestion and have finalized the examples relating to compensation as proposed. Therefore, an employee offers or negotiates terms of a loan for compensation or gain even if the employee does not receive a referral fee or commission or other special compensation for the mortgage loan.

IV. Regulatory Analysis

A. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA)[54] requires Federal agencies to prepare and make available to the public a Final Regulatory Flexibility Analysis (FRFA) for a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. For purposes of the RFA, a "small entity" within the jurisdiction of the OCC is a national bank or a Federal branch or agency with assets of $175 million or less (small national bank).[55] In the NPRM, the OCC certified, pursuant to section 605(b) of the RFA, that the proposal would not have a significant economic impact on a substantial number of small entities.[56] The OCC's certification was based on an estimated average total compliance cost of $18,800 per small national bank and the impact of compliance costs as a percentage of labor costs, as well as compliance costs as a percent of noninterest expenses. The OCC received one comment—from the Small Business Administration's Office of Advocacy (SBA Advocacy)—on the certification.

Based in part on this comment letter, the OCC has reevaluated the effect of this final rule on small national banks, and, for the reasons stated below, has determined that this rule will have a significant economic impact on a substantial number of small entities. Therefore, we have prepared the following FRFA in accordance with 5 U.S.C. 604.

1. Need for, and Objectives of, the Final Rule

The need for, and objectives of, this final rule are described in detail in the **SUPPLEMENTARY INFORMATION** section.

2. Significant Issues Raised by Public Comments

In the comment it submitted, SBA Advocacy expressed concern that the factual basis for the OCC's (and other Agencies') conclusion that the proposal would not have a significant economic impact on a substantial number of small entities may be insufficient, noting that the OCC's certification did not specify the assumptions used concerning labor costs or noninterest expenses. SBA Advocacy stated its concern that OCC's economic impact may be underestimated and sought clarification regarding the proposal's impact on the number of small national banks.[57]

In part as a result of this comment letter, the OCC conducted further analysis of the effect of its rule on the banking industry as a whole and on small banks in particular. The OCC also obtained additional information about the impact of the proposal on national banks. As a result of this information we have modified our initial conclusions about the economic effect of the rule on small national banks.

3. Description and Estimate of Small Entities Affected by the Final Rule

For purposes of OCC regulation, the final rule applies to national banks, Federal branches and agencies of foreign banks, their operating subsidiaries (collectively referred to as national banks), and their employees who act as mortgage loan originators.

OCC estimates that 623 national banks with employees originating loans secured by residential real estate are small entities based on the SBA's general principles of affiliation (13 CFR 121.103(a)) and the size threshold for a small national bank. The OCC believes the final rule will have a significant impact on approximately 10 percent of these small national banks (65 banks).[58] We classify the impact of total costs on a small national bank as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. Mean total costs per bank in the group of small banks where compliance costs are significant is approximately $25,000 per bank.[59]

4. Recordkeeping, Reporting, and Other Compliance Requirements

The final rule imposes requirements on both national banks and their employees who engage in the business of mortgage loan origination, regardless of the size of the national bank. Typical recordkeeping, administrative, computer technology and bank management skills will be needed to comply with all of the rule's requirements.

Reporting Requirements. Unless the *de minimis* exception applies, § 34.103(a) of the final rule requires a mortgage loan originator employed by a national bank to register with the Registry, maintain such registration, and obtain a unique identifier. Under § 34.103(b), a bank must require each mortgage loan originator employee to comply with these requirements. Section 34.103(d) describes the categories of information that an employee, or the employing bank on the employee's behalf, must submit to the Registry, along with the employee's attestation as to the correctness of the information supplied, and the employee's authorization to obtain further information and make public some of this information. This section also requires the submission of the mortgage loan originator's fingerprints to the Registry.

Section 34.103(e) specifies bank and employee information that a bank must submit to the Registry in connection with the initial registration of one or more mortgage loan originators. The bank must annually renew this information and update this information if necessary between renewals. Authorized bank representatives must attest to the correctness of this information and that such information will be updated on a timely basis.

Disclosure Requirements. Section 34.105(b) requires the mortgage loan originator to provide the unique identifier to a consumer: (i) Upon request; (2) before acting as a mortgage loan originator; and (3) through the originator's initial written communication with a consumer, if any, whether on paper or electronically.

Section 34.105(a) requires the bank to make the unique identifier(s) of its mortgage loan originator(s) available to consumers in a manner and method practicable to the bank.

Recordkeeping and Compliance Requirements.

Section 34.104 requires a bank that employs one or more mortgage loan originators to adopt and follow written policies and procedures designed to assure compliance with this final rule.

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[54] 5 U.S.C. 601–612.

[55] 13 CFR 121.201.

[56] In addition to the OCC, the Board, the FDIC, the OTS, the NCUA, and the FCA also certified in the proposed rule that the proposal would not have a significant economic impact on a substantial number of small entities. *See* 74 FR at 27398–27399.

[57] A discussion of SBA Advocacy's comments on other provisions of the proposed rule, namely, the *de minimis* exception and the proposed 6-month initial compliance period, is contained in the **SUPPLEMENTARY INFORMATION** section of this final rule.

[58] The OCC estimated the impact on small banks both with and without employee turnover because it is the OCC's understanding that the turnover rate at small banks is significantly lower than the rate at large banks and there may be no turnover for several years in a row at some banks. However, even without employee turnover, the final rule appears to have a significant impact on a substantial number of small banks.

[59] The mean totals of the cost estimates (*i.e.*, the higher cost estimate and the lower cost estimate) for all (623) small banks impacted by the final rule are $32,000 and $27,000 respectively. The mean total cost per small bank in the group of small banks where costs are significant is approximately $26,000 under the higher cost estimate, and $23,000 under the lower cost estimate.

These policies and procedures must be appropriate to the nature, size, complexity, and scope of their mortgage lending activities and will apply only to those employees acting within their scope of employment at the bank. At a minimum, these policies and procedures must establish a process for: (i) Identifying which employees are required to register, (ii) communicating the registration requirements to employees, (iii) complying with the rule's unique identifier requirements, (iv) confirming the adequacy and accuracy of employee registrations though comparisons with bank records, (v) monitoring employee compliance with the rule, (vi) independent compliance testing, (vii) taking appropriate actions with respect to employees who fail to comply with the registration requirements, (viii) reviewing employee criminal history background checks received pursuant to this rule, and (ix) monitoring third party compliance with the S.A.F.E. Act.

5. Steps Taken To Address the Economic Impact on Small Entities

The final rule reflects the consideration given by the OCC, along with the other Agencies, to the impact that its requirements would have on small entities.

First, the Agencies have revised the rule's *de minimis* exception to reduce compliance burden. In the proposed rule, the Agencies established a *de minimis* exception that would have excepted from the registration requirements an employee of an Agency-regulated institution if, during the last 12 months: (1) The employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans; and (2) the Agency-regulated institution employs mortgage loan originators who, while excepted from registration pursuant to this section, in the aggregate, acted as a mortgage loan originator in connection with 25 or fewer residential mortgage loans. Many commenters on this provision noted the complexity of the proposed exception. One commenter stated that the *de minimis* exception would not have any significant effect because its complexity would outweigh its benefits. Others noted that the proposed exception would be difficult for an institution to monitor and maintain. Still others said that the proposed *de minimis* exception would be fairer, and much easier to apply, if the threshold limitation applied only to the employee or to the institution, but not both. SBA Advocacy specifically commented that the proposed *de minimis* exception would make the rule unduly burdensome on small community banks. In response to these and other comments and upon further analysis, the Agencies removed the institution threshold from this *de minimis* exception. As a result, the final rule's *de minimis* exception only contains the individual threshold, as well as a prohibition on any Agency-regulated institution from engaging in any act or practice to evade the limits of the *de minimis* exception. This revised exception should simplify compliance and therefore impose the least burden overall for institutions, including small entities.

The Agencies also considered, pursuant to section 1507(c) of the S.A.F.E. Act (12 U.S.C. 5106(c)), applying the requirements of the rule only to institutions above a certain asset threshold, such as the threshold for Home Mortgage Disclosure Act reporting. However, the Agencies agreed that this would not further the consumer protection purposes of the S.A.F.E. Act [60] in that customers of smaller banks would not have the same information on mortgage loan originators as customers of larger institutions. In addition, we believed the exception should be structured so that employees of institutions of all sizes could qualify.

The OCC also has reviewed alternatives for small entity compliance, including eliminating the requirement for small banks to adopt and follow written policies and procedures addressing all of the elements described in the final rule. For example, under such an approach, a small bank's risk based compliance program might include only such procedures as are necessary to enable the bank to demonstrate compliance with the registration and renewal requirements of the S.A.F.E. Act. Although such an approach may have reduced the compliance cost per small bank, the OCC does not believe that it would best serve the interests of national banks or the OCC. Appropriate policies and procedures provide an institution and its employees with the expectations of the institution's board and include the specific implementing guidance that is applicable to the activities of that institution. Furthermore, such policies and procedures are necessary to enable examiners to evaluate the effectiveness of institutions' implementation of the S.A.F.E. Act requirements that apply to them. In reviewing this alternative, we determined that applying the policies and procedures requirement in the same way to all institutions, regardless of size, is necessary to ensure consistency in implementation and enforcement of the S.A.F.E. Act and is, therefore, the most appropriate way to ensure that the purposes of the S.A.F.E Act are met.

The OCC, and the other Agencies, also made changes to the final rule that reduce the impact that its requirements would have on all Agency-regulated financial institutions, including small entities. The final rule decreased the amount of information required for submission by a mortgage loan originator. Specifically, the final rule does not require submission of financial history information such as bankruptcies and liens; employment terminations; pending actions; and felonies unrelated to crimes of dishonesty. Furthermore, the Agencies declined to include loan modification activities in the final rule's definition of mortgage loan originator. Under the OCC's rule, Agency-regulated institution employees engaged solely in bona fide cost-free loss mitigation efforts which result in reduced and sustainable payments for the borrower generally would not meet the definition of "mortgage loan originator." This reduces the number of bank employees subject to the final rule's requirements.

Board: Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

The final rule implements the S.A.F.E. Act's Federal registration requirements for mortgage loan originators. The S.A.F.E. Act states that the objectives of this registration include providing increased accountability and tracking of mortgage loan originators and providing consumers with easily accessible information at no charge regarding mortgage loan originators. The Board is not aware of other Federal rules which may duplicate, overlap, or conflict with the proposed rule.

The final rule applies to all banks that are members of the Federal Reserve System (other than national banks) and certain of their respective subsidiaries, branches and Agencies of foreign banks (other than Federal branches, Federal

[60] Among other things, the objectives of the S.A.F.E. Act include: Enhancing consumer protections and supporting anti-fraud measures; increasing accountability and tracking of loan originators; and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators. S.A.F.E. Act at section 1502 (12 U.S.C. 5101).

agencies, and insured State branches of foreign banks), and commercial lending companies owned or controlled by foreign banks.

Under the Board's final rule, employees of the above entities who act as residential mortgage loan originators must register with the Registry. obtain a unique identifier, and maintain this registration, consistent with the requirements of the S.A.F.E. Act. The above institutions must require their employees who act as residential mortgage loan originators to comply with the registration requirements and obtain a unique identifier. These institutions also must provide certain information to the Registry and must adopt and follow written policies and procedures designed to assure compliance with these requirements. The institutions and their employees must disclose the unique identifier of mortgage loan originators in compliance with the rule.

Under regulations issued by the Small Business Administration,[61] a small entity includes a banking organization with assets of $175 million or less (a small banking organization). As of December 31, 2008, there were approximately 433 State member banks that are small banking organizations. The Agencies proposed the *de minimis* exception in an effort to reduce compliance costs on small businesses.

The Board received comment from the Office of Advocacy of the U.S. Small Business Administration on its RFA analysis. This commenter expressed concern that the factual basis for the Board's (and other agencies') RFA analysis was insufficient and that the Board and other agencies may have underestimated the costs associated with the proposed rule. The commenter queried whether legal compliance costs and training and tracking costs should be estimated and included in the analysis. Specifically with respect to the Board's RFA analysis, the commenter recommended that the Board use revenue, rather than profits, in determining economic impact since revenue may be a more transparent indicator than profits.

The Board notes that legal compliance costs, tracking compliance, and training have been included in the burden analyses for the rule. The Board estimates compliance costs to be $7.6 million in the aggregate for the 433 small State member banks. As of December 31, 2008, these institutions had $2.4 billion in revenues in the aggregate. Therefore, compliance costs would be less than 1% of revenues.

[61] *See* 13 CFR 121.201.

The Board notes that it has adopted in the final rule alternatives to the proposed rule, which have reduced compliance costs of the rule. The final rule decreased the amount of information required for submission by a mortgage loan originator. For example, the final rule does not require submission of financial history information such as bankruptcies and liens; employment terminations; pending actions; and felonies unrelated to crimes of dishonesty. Furthermore, the Agencies declined to include loan modification activities in the definition of mortgage loan originator, after considering comments on this issue, including those regarding the burden and costs of compliance. Under the Board's rule, modifying the terms of an existing loan to a borrower as part of the institution's loss mitigation efforts would not constitute acting as a mortgage loan originator for purposes of the S.A.F.E. Act.

In addition, the final rule simplifies the *de minimis* exception to registration requirements of the rule, thereby decreasing compliance costs and increasing the number of employees who will qualify for the individual limits required under the *de minimis* exception. Under the proposed rule, even if an employee was within the individual limit on mortgage loan origination activity, the employee still could not utilize the exception unless the institution itself was within the aggregate limit on unregistered mortgage loan originators. The Board notes that it has taken a conservative approach to estimating the compliance impact of the revised *de minimis* exception, assuming that at least as many small entities would not incur registration-related expenses under the final rule as the proposed rule. Further, the Board notes that small institutions typically do not originate a significant volume of mortgage loans.

The Board has not adopted other significant alternatives to the proposed rule. For example, the final rule continues to include a mandate for Agency-regulated institutions to require their mortgage loan originator employees to meet registration requirements and adopt policies and procedures to assure compliance. These requirements remain in the final rule because the Board believes that these provisions are necessary to achieve the objectives of the statute and to assure compliance with the rule.

Therefore, pursuant to section 605(b) of the RFA, the Board hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Although a regulatory flexibility analysis is not needed, the Board has voluntarily provided an analysis.

FDIC: In accordance with the RFA, 5 U.S.C. 601–612, an agency must publish a final regulatory flexibility analysis with its final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with less than $175 million in assets). The FDIC hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Approximately 3,116 FDIC-supervised banks are small entities. In the RFA analysis for the proposed rule, the FDIC determined that approximately 2,255 of those small entities would incur only those costs related to adopting and following appropriate policies and procedures, not registration-related expenses, because they originate 25 or fewer residential mortgage loans annually and therefore would not have qualified for the aggregate institution limit of the proposed rule's *de minimis* exception. Since the aggregate institution limit has been eliminated in the final rule, the exception will apply to a greater number of employees than under the proposed rule. However, because it is difficult to estimate how many more employees would be covered by the revised *de minimis* exception, a more conservative approach would be to assume that at least as many small entities would not incur registration-related expenses under the final rule as under the proposed rule (*i.e.*, 2,255 small entities). For those 2,255 small entities, the set up costs are estimated to be about 0.5% of total non-interest expense and annual costs are estimated to be about 0.2% of total non-interest expenses (based on a mean non-interest expense of $2.5 million reported by the 3,116 FDIC-supervised small entities for fourth quarter 2008).

Given the foregoing assumptions, only approximately 861 small entities supervised by the FDIC—about 28% of FDIC-supervised small entities—will be subject to all of the requirements of the final rule. For those 861 small entities, the estimated initial costs for complying with the final rule would represent, on average, approximately 0.7% of total non-interest expenses, and the annual compliance costs would represent, on average, approximately 0.3% of total non-interest expenses (based on the aforementioned mean non-interest expense of $2.5 million).

For the 861 FDIC supervised small entities that will be subject to all of the

requirements of the final rule, the S.A.F.E. Act requirements will cost $17,395 for set up and $7,436 annually (based on an estimated 350 hours for set up, 113 hours for annual compliance, 11.435 mortgage loan originators per entity, and a weighted average labor cost of $49.70 per hour). For the 2,255 FDIC supervised small entities that will incur only those costs related to adopting and following appropriate policies and procedures, the S.A.F.E. Act requirements will cost $12,922 for set up (based on an estimated 260 labor hours and the aforementioned labor cost) and $4,473 annually (based on an estimated 90 labor hours and the aforementioned labor cost).

OTS: The RFA[62] requires Federal agencies to prepare and make available to the public a Final Regulatory Flexibility Analysis (FRFA) for a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. For purposes of the RFA and OTS-regulated entities, a "small entity" within the jurisdiction of the OTS is a savings association with assets of $175 million or less (small savings association). In the NPRM, the OTS certified, pursuant to section 605(b) of the RFA, that the regulatory flexibility analysis otherwise required under section 604 of the RFA was not required because the proposal would not have a significant economic impact on a substantial number of small entities.[63] The OTS's certification was based on an estimated average total compliance cost of $13,311 per small savings association and the impact of compliance costs as a percentage of labor costs, as well as compliance costs as a percent of noninterest expenses. The OTS received one comment—from the Small Business Administration's Office of Advocacy (SBA Advocacy)—on the certification.

Based in part on this comment letter, the OTS has reevaluated the effect of this final rule on small savings associations, and, based on the information provided below, has reaffirmed that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, OTS is not required to prepare an FRFA under 5 U.S.C. 604. However, OTS believes that the initial analysis included in the proposed rule should be slightly modified, and therefore, we have included in the final rule a description of the economic effect on small savings associations and additional information addressing the final rule and the comment letter on the certification.

1. Description and Estimate of Small Entities Affected by the Final Rule

For purposes of the OTS regulation, the final rule applies to savings associations and their operating subsidiaries and their employees who act as mortgage loan originators. In determining the economic impact on small savings associations, OTS determined that 385 small savings associations would potentially be affected by the final rule. We estimate that 23 of these savings associations, or 6 percent, have no mortgage loan originator (MLO) employees, and therefore, will incur no costs under the final rule. The remaining 362 small savings associations can be expected to incur costs under the final rule. Specifically, OTS estimates the average cost of compliance for these 362 small savings associations to be $17,085. In order to determine whether the costs of compliance have a significant economic impact on this population of small savings associations, we compared each association's projected compliance costs to both its total annualized labor costs and to its total annualized noninterest expense. (Noninterest expense is typically used as a benchmark for "overhead" in financial firms.) If projected S.A.F.E. Act compliance costs exceeded 5 percent of a small saving association's total labor costs, or 2.5 percent of its noninterest expense, OTS considered the impact of compliance to be "significant." These benchmarks have been used in the past by OTS and other Federal financial regulatory agencies. OTS estimates that 32 small savings associations, or 8.3 percent of the small savings association population, will experience a significant economic impact associated with compliance using the benchmarks described above. The average cost of compliance for these 32 savings associations is projected to be $17,441. Pursuant to § 605(b) of the RFA, OTS therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and, accordingly, a FRFA is not required.

2. Need for, and Objectives of, the Final Rule

As described in the **SUPPLEMENTARY INFORMATION**, the objectives of this final rule are to implement the requirements of the S.A.F.E. Act. Specifically, the final rule implements:

- Section 1504 of the S.A.F.E. Act (12 U.S.C. 5103(a)), which provides that subject to the existence of a registration regime, an individual who is an employee of a depository institution may not engage in the business of a loan originator without first: (i) Obtaining and maintaining annually a registration as a registered loan originator, and, (ii) obtaining a unique identifier; and,
- Section 1507 of the S.A.F.E. Act (12 U.S.C. 5106), which requires the Agencies to: (i) Jointly develop and maintain a system for registering employees of a depository institution and of a subsidiary that is owned and controlled by a depository institution and regulated by an Agency as registered loan originators with the National Mortgage License System and Registry (Registry); and (ii) furnish certain information, or cause it to be furnished, to the Registry.

3. Significant Issues Raised by Public Comments

As indicated above, the OTS did not publish an IRFA with the proposed rule. We therefore did not receive any comments specifically directed at an analysis in an IRFA. However, in the comment the SBA Advocacy submitted, it expressed concern that the factual basis for the OTS's (and other Agencies') conclusion that the proposal would not have a significant economic impact on a substantial number of small entities may be insufficient, noting that the OTS's certification did not specify the assumptions used concerning labor costs or noninterest expenses. In addition, SBA Advocacy stated its concern that OTS's economic impact may be underestimated and sought clarification regarding the proposal's impact on the number of small savings associations.[64] SBA Advocacy recommended that the Agencies work with the industry to determine an accurate estimate of the economic impact of the rule on small entities and develop ways to minimize that burden. In part as a result of this comment letter and as noted above, the OTS conducted further analysis of the effect of our rule on the savings association industry as a whole and on small savings associations in particular.

4. Recordkeeping, Reporting, and Other Compliance Requirements

The final rule applies to savings associations, their operating subsidiaries

[62] 5 U.S.C. 601–612.

[63] In addition to the OTS, the Board, the OCC, the FDIC, the NCUA, and the FCA also certified in the proposed rule that the proposal would not have a significant economic impact on a substantial number of small entities. *See* 74 FR at 27398–27399.

[64] A discussion of SBA Advocacy's comments on other provisions of the proposed rule, namely, the *de minimis* exception and the proposed 6-month compliance period, is contained in the **SUPPLEMENTARY INFORMATION** section of this final rule.

(collectively referred to as savings associations), and their employees who act as mortgage loan originators. Typical recordkeeping, administrative, computer technology and savings association management skills will be needed to comply with all of the rule's requirements.

Reporting Requirements. Unless the *de minimis* exception applies, § 563.103(a) of the final rule requires a mortgage loan originator employed by a savings association to register with the Registry, maintain such registration, and obtain an unique identifier. Under § 563.103(b), an association must require each mortgage loan originator employee to comply with these requirements. Section 563.103(d) describes the categories of information that an employee, or the employing savings association on the employee's behalf, must submit to the Registry, along with the employee's attestation as to the correctness of the information supplied, and the employee's authorization to obtain further information and make public some of this information. This section also requires the submission of the mortgage loan originator's fingerprints to the Registry.

Section 563.103(e) specifies savings association and employee information that an association must submit to the Registry in connection with the initial registration of one or more mortgage loan originators. The savings association must annually renew this information and update this information if necessary between renewals. Authorized savings association representatives must attest to the correctness of this information and that such information will be updated on a timely basis.

Disclosure Requirements. Section 563.105(b) requires the mortgage loan originator to provide the unique identifier to a consumer: (i) Upon request; (2) before acting as a mortgage loan originator; and (3) through the originator's initial written communication with a consumer, if any, whether on paper or electronically.

Section 563.105(a) requires the savings association to make the unique identifiers of its mortgage loan originators available to consumers in a manner and method practicable to the association.

Recordkeeping and Compliance Requirements. Section 563.104 requires a savings association that employs one or more mortgage loan originators to adopt and follow written policies and procedures designed to assure compliance with this final rule. These policies and procedures must be appropriate to the nature, size, complexity, and scope of their mortgage lending activities and will apply only to those employees acting within their scope of employment at the savings association. At a minimum, these policies and procedures must establish a process for: (i) Identifying which employees are required to register, (ii) communicating the registration requirements to employees, (iii) complying with the rule's unique identifier requirements, (iv) confirming the adequacy and accuracy of employee registrations though comparisons with savings association records, (v) monitoring employee compliance with the rule, (vi) independent compliance testing, (vii) taking appropriate actions with respect to employees who fail to comply with the registration requirements, (viii) reviewing employee criminal history background checks received pursuant to this rule, and (ix) monitoring third party compliance with the S.A.F.E. Act.

5. Steps Taken To Address the Economic Impact on Small Entities

The final rule reflects the consideration given by the OTS, along with the other Agencies, to the impact that its requirements would have on small entities. First, the Agencies have revised the rule's *de mininis* exception to reduce compliance burden. In the proposed rule, the Agencies established a *de minimis* exception that would have excepted from the registration requirements an employee of an Agency-regulated institution if, during the last 12 months: (1) The employee acted as a mortgage loan originator for 5 or fewer residential mortgage loans and (2) the Agency-regulated institution employs mortgage loan originators who, while excepted from registration pursuant to this section, in the aggregate, acted as a mortgage loan originator in connection with 25 or fewer residential mortgage loans. Many commenters on this provision noted the complexity of the proposed exception. One commenter stated that the *de minimis* exception would not have any significant effect because its complexity would outweigh its benefits. Others noted that the proposed exception would be difficult for an institution to monitor and maintain. Still others said that the proposed *de minimis* exception would be fairer, and much easier to apply, if the threshold limitation applied only to the employee or to the institution, but not both. SBA Advocacy specifically commented that the proposed *de minimis* exception would make the rule unduly burdensome on small community institutions. In response to these and other comments and upon further analysis, the Agencies removed the institution threshold from this *de minimis* exception. As a result, the final rule's *de minimis* exception only contains the individual threshold, as well as a prohibition on any Agency-regulated institution from engaging in any act or practice to evade the limits of the *de minimis* exception. This revised exception should simplify compliance and therefore impose the least burden overall for institutions, including small entities.

The OTS also has reviewed alternatives for small entity compliance, including eliminating the requirement for small savings associations to adopt and follow written policies and procedures addressing all of the elements described in the final rule. For example, under such an approach, a small savings association's risk based compliance program might include only such procedures as are necessary to enable the association to demonstrate compliance with the registration and renewal requirements of the S.A.F.E. Act and the final rule. Although such an approach may have reduced the compliance cost per small savings association, the OTS does not believe that it would best serve the interests of savings associations or the OTS. Appropriate policies and procedures provide an institution and its employees with the expectations of the institution's board and include the specific implementing guidance that is applicable to the activities of that institution. Furthermore, such policies and procedures are necessary to enable examiners to evaluate the effectiveness of institutions' implementation of the S.A.F.E. Act requirements that apply to them. In reviewing this alternative, we determined that applying the policies and procedures requirement in the same way to all institutions, regardless of size, is necessary to ensure consistency in implementation and enforcement of the S.A.F.E. Act and is, therefore, the most appropriate way to ensure that the purposes of the S.A.F.E Act are met.

The OTS, and the other Agencies, also made changes to the final rule that reduce the impact that its requirements would have on all Agency-regulated financial institutions, including small entities. The final rule decreased the amount of information required for submission by a mortgage loan originator. Specifically, the final rule does not require submission of financial history information such as bankruptcies and liens; employment and terminations; pending actions; and felonies unrelated to crimes of dishonesty. Furthermore, the Agencies declined to include loan modification

activities in the final rule's definition of mortgage loan originator. Under the OTS's rule, Agency-regulated institution employees engaged solely in bona fide cost-free loss mitigation efforts, which result in reduced and sustainable payments for the borrower generally would not meet the definition of "mortgage loan originator." This reduces the number of savings association employees subject to the final rule's requirements.

FCA: Pursuant to section 605(b) of the RFA (5 U.S.C. 601 *et seq.*) the FCA certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities.

The comment letter from the Office of Advocacy in the Small Business Administration (SBA) stated that the FCA did not provide any information about the potential impact of the rule on FCS institutions. The RFA requires each agency to certify that a rulemaking will not have a significant economic impact on a significant number of small entities. The FCA observes that the RFA definition of "small entity" derives from the SBA's definition of "small business concern," including size standards. According to section 3(a)(1) of the Small Business Act, as amended, a small business concern is independently owned and operated, and it is not dominant in its field of operation. Whether a business concern is "independently owned and operated" depends, in part, on its affiliation with other business entities. Generally, an affiliate is either controlled by, or has control over another entity. Businesses that are economically dependent on each other because of their ownership, management, and contractual relationships may be affiliates. FCS associations own and control their funding banks. Additionally, FCS associations borrow exclusively from their funding banks, and they pledge virtually all of their loans and other assets to these banks to secure their loans. For these reasons, the FCA has determined that the interrelated ownership, control, and contractual relationships are sufficient to treat FCS banks and associations as a single entity for the purposes of the RFA.

SBA regulations also establish size categories to determine whether entities that engage in "Credit Intermediation and Related Activities" are small business concerns. These regulations categorize "All Other Non-Depository Credit Intermediation" institutions as small entities if their annual receipts are $7 million or less. As affiliated entities, the combined annual receipts of each Farm Credit bank and its affiliated associations exceed $7 million. For this reason, FCS institutions do not qualify as small entities under the RFA.

NCUA: In accordance with the RFA, 5 U.S.C. 601–612, NCUA must publish a regulatory flexibility analysis with its final rule, unless NCUA certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with less than $10 million in assets). Approximately 2,995 out of 7,554 Federally insured credit unions and 61 out of 156 non-Federally insured credit unions are small entities. NCUA hereby certifies that the final rule would not have a significant economic impact on a substantial number of these small entities.

The final rule will apply to all Federally insured credit unions, non-Federally insured credit unions located in States where the State supervisory authorities enter into and maintain MOUs with NCUA, and employees who act as mortgage originators for these credit unions. The final rule imposes no requirements on credit unions not originating residential mortgages. This accounts for 1,923 of the 2,995 small, Federally insured credit unions and 45 of the 61 small, non-Federally insured credit unions.

Under the final rule, all these credit unions, including small entities, originating any residential mortgages must have policies and procedures in place for mortgage loan origination registration. This currently includes only about 1,072 of the 2,995 small, Federally insured credit unions, and only about 16 of the 61 small, non-Federally insured credit unions. The policies and procedures must be appropriate to the nature, size, complexity, and scope of the credit unions' mortgage lending activities and will apply only to those employees acting within their scope of credit union employment.

Approximately 2,716 of the 2,995 small, Federally insured credit unions, and 15 of the 16 small, non-Federally insured credit unions, would qualify for the final rule's *de minimis* exception to the registration requirements for mortgage loan originators because they originate fewer than five or no residential mortgage loans. Those credit unions not originating mortgages have no obligations under this final rule. Those small credit unions and their employees originating between one and four mortgages per year are not subject to the final rule's registration requirements and, thus, drafting and implementing the policies and procedures will not be burdensome.

Accordingly, NCUA estimates only about 279 of the 2,995 small Federally insured credit unions, about 9.3% of them, and only one of the 61 small, non-Federally insured credit unions, about 1.6%, will be subject to the final rule's registration requirements and will establish policies and procedures for the registration.

Therefore, for all of the above reasons, NCUA concludes the final rule would not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the agencies may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in this joint final rule have been submitted by the OCC, FDIC, OTS, and NCUA to, and pre-approved by, OMB under section 3506 of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320). The FCA collects information from Farm Credit System institutions, which are Federal instrumentalities, in the FCA's capacity as their safety and soundness regulator, and, therefore, OMB approval is not required for this collection. The Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains requirements subject to the PRA. The requirements are found in 12 CFR __.103(a)–(b), (d)–(e), __.104, and __.105.

No comments concerning PRA were received in response to the notice of proposed rulemaking. Therefore, the hourly burden estimates for respondents noted in the proposed rule have not changed. The agencies have an ongoing interest in your comments. They should be sent to [Agency] Desk Officer, [OMB Control No.], by mail to U.S. Office of Management and Budget, 725 17th Street, NW., 10235, Washington, DC 20503, or by fax to (202) 395–6974. Written comments should address:

(a) Whether the collection of information is necessary for the proper performance of the Federal banking agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

C. OCC Executive Order 12866 Determination

Executive Order 12866 requires each Federal agency to provide to the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA) a Regulatory Impact Analysis for agency actions that are found to be "significant regulatory actions." "Significant regulatory actions" include, among other things, rulemakings that "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."[65] Regulatory actions that satisfy one or more of these criteria are referred to as "economically significant regulatory actions." In conducting this Regulatory Impact Analysis, Executive Order 12866 requires each Federal agency to provide to OIRA:

- The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need;
- An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and Tribal governments in the exercise of their governmental functions;
- An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
- An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and
- An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

The OCC has concluded that the final rule exceeds the $100 million criterion and therefore is an economically significant regulatory action. As required by Executive Order 12866, the OCC prepared a Regulatory Impact Analysis, which was submitted to OIRA on January 8, 2010. The OCC's final set of revisions responding to OIRA comments was submitted on July 1, 2010. As discussed in more detail in the Regulatory Impact Analysis, the OCC determined that given the constraints imposed on the OCC by the S.A.F.E. Act, and based on the estimated mean cost, the rule was the least cost option available to the OCC. The OCC's Regulatory Impact Analysis in its entirety is available at *http://www.regulations.gov*, docket ID OCC–2010–0007.

D. OTS Executive Order 12866 Determination

Executive Order 12866 requires each Federal agency to provide the Administrator of OMB's OIRA a Regulatory Impact Analysis for agency actions that are found to be "significant regulatory actions." Significant regulatory actions include, among other things, rulemakings that "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities."[66] Regulatory actions that satisfy one or more of these criteria are referred to as "economically significant regulatory actions." In conducting this Regulatory Impact Analysis, Executive Order 12866 requires each Federal agency to provide to OIRA:

- The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need;
- An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and Tribal governments in the exercise of their governmental functions;
- An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
- An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and

[65] Executive Order 12866 (September 30, 1993), 58 FR 51735 (October 4, 1993). For the complete text of the definition of "significant regulatory action," *see* E.O. 12866 at § 3(f). A "regulatory action" is "any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking." E.O. 12866 at § 3(e).

[66] Executive Order 12866 (September 30, 1993), 58 FR 51735 (October 4, 1993). For the complete text of the definition of "significant regulatory action," *see* E.O. 12866 at § 3(f). A "regulatory action" is "any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking." E.O. 12866 at § 3(e).

• An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

The OTS has determined that this final rule is not a significant regulatory action under Executive Order 12866. We have concluded that the changes made by this final rule will not have an annual effect on the economy of $100 million or more. The OTS further concludes that this final rule does not meet any of the other standards for a significant regulatory action set forth in Executive Order 12866. As required by Executive Order 12866, the OTS prepared a Regulatory Impact Analysis, which was submitted to OIRA on March 9, 2010. The OTS's final revisions were submitted to OIRA on July 12, 2010. As discussed in more detail in the Regulatory Impact Analysis, the OTS determined that given the constraints imposed on the OTS by the S.A.F.E. Act, and based on the estimated cost, the rule was the least cost option available to the OTS. The OTS's Regulatory Impact Analysis in its entirety is available at *http://www.regulations.gov*, Docket No. OTS–2010–0021.

E. OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), requires the OCC and OTS to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $133 million or more in any one year. However, this requirement does not apply to regulations that incorporate requirements specifically set forth in law. Because this proposed rule implements the S.A.F.E. Act, the OTS, and OCC have not conducted an Unfunded Mandates Analysis for this rulemaking.[67]

F. OCC and OTS Executive Order 13132 Determination

E.O. 13132 sets forth certain "Fundamental Federalism Principles" and "Federalism Policymaking Criteria" that must be followed by the OCC and OTS in developing any regulation that has Federalism implications. A regulation has Federalism implications if it has "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." If a rule meets the test for Federalism implications, the executive order requires the agency, among other things, to prepare a Federalism summary impact statement for inclusion in the rule's **SUPPLEMENTARY INFORMATION** section and must consult with State and local officials about the rule. The OCC and OTS have determined that their respective portions of the final rule do not have a substantial direct effect on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the final rule does not have any Federalism implications for purposes of Executive Order 13132.

G. NCUA Executive Order 13132 Determination

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental Federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5) voluntarily complies with the Executive Order. The final rule applies to credit unions and would not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that the final rule does not constitute a policy that has Federalism implications for purposes of the Executive Order.

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

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

I. NCUA: Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. NCUA does not believe this final rule is a "major rule" within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget (OMB) for its determination and OMB concurred that the rule is not a major rule.

[FR Doc. C1–2010–18148 Filed 8–20–10; 8:45 am]

BILLING CODE 1301–00–D

[67] *See* 2 U.S.C. 1531.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0037; Directorate Identifier 2007–NE–41–AD; Amendment 39–16404; AD 2010–17–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co. KG. (RRD) Models Tay 650–15 and Tay 651–54 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Strip results from some of the engines listed in the applicability section of this AD revealed excessively corroded low-pressure turbine disks stage 2 and stage 3. The corrosion is considered to be caused by the environment in which these engines are operated. Following a life assessment based on the strip findings it is concluded that inspections for corrosion attack are required. The action specified by this European Aviation Safety Agency (EASA) AD 2008–0122 was intended to avoid a failure of a low-pressure turbine disk stage 2 or stage 3 due to potential corrosion problems which could result in uncontained engine failure and damage to the airplane. It has been later realized that the same unsafe condition could potentially occur on more serial numbers for the Tay 650–15 engines and on the Tay 651–54 engines. This AD, superseding EASA AD 2008–0122, retaining its requirements, is therefore issued to expand the Applicability in adding further engine serial numbers for the Tay 650–15 engines and in adding the Tay 651–54 engines.

We are issuing this AD to detect corrosion that could cause the stage 2 or stage 3 disk of the LP turbine to fail and result in an uncontained failure of the engine.

DATES: This AD becomes effective September 27, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 27, 2010.

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

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov*; phone: (781) 238–7758; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA proposed to amend 14 CFR part 39 by superseding AD 2009–22–01, Amendment 39–16052 (74 FR 55121, October 27, 2009), with a proposed AD. The proposed AD applies to RRD Models Tay 650–15 and Tay 651–54 turbofan engines. We published the proposed AD in the Federal Register on May 6, 2010 (75 FR 24825). That action proposed to correct an unsafe condition for the specified products. The MCAI states:

> Strip results from some of the engines listed in the applicability section of this AD revealed excessively corroded low-pressure turbine disks stage 2 and stage 3. The corrosion is considered to be caused by the environment in which these engines are operated. Following a life assessment based on the strip findings it is concluded that inspections for corrosion attack are required. The action specified by this European Aviation Safety Agency (EASA) AD 2008–0122 was intended to avoid a failure of a low-pressure turbine disk stage 2 or stage 3 due to potential corrosion problems which could result in uncontained engine failure and damage to the airplane. It has been later realized that the same unsafe condition could potentially occur on more serial numbers for the Tay 650–15 engines and on the Tay 651–54 engines. This AD, superseding EASA AD 2008–0122, retaining its requirements, is therefore issued to expand the Applicability in adding further engine serial numbers for the Tay 650–15 engines and in adding the Tay 651–54 engines.

Comments

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

Request to Reference the Current EASA Type Certificate Approval

One commenter, RRD, requests that we revise the AD to reference the current EASA type certificate approval rather than the original United Kingdom type certificate approval.

We agree that the current type certificate approval is from EASA, but since we do not repeat the preamble section of the proposed AD that references this information, we did not change the AD. We will reference the correct information in future AD actions.

Request To Correct a Typographical Error

RRD requests that we correct a typographical error under FAA's Determination and Requirements of this Proposed AD. Specifically, change "HP" to "LP".

We agree that "HP" should be "LP". However, that paragraph is not repeated in the Final Rule. We did not change the AD.

Request To Remove Gulfstream G–IV Airplane From the Applicability

RRD requests that we delete the Gulfstream G–IV airplane from the applicability, as the Tay 650–15 and Tay 651–54 turbofan engines are not installed on that airplane.

We agree and removed that airplane from the applicability.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about three Tay 651–54 engines installed on airplanes of U.S. registry. We also estimate that it will take about three work-hours per engine to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $40,000 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $120,765.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–16052 (74 FR 55121, October 27, 2009), and by adding a new airworthiness directive, Amendment 39–16404, to read as follows:

2010–17–12 Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc, Derby, England): Amendment 39–16404. Docket No. FAA–2007–0037; Directorate Identifier 2007–NE–41–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 27, 2010.

Affected ADs

(b) This AD supersedes AD 2009–22–01, Amendment 39–16052.

Applicability

(c) This AD applies to:

(1) RRD model Tay 650–15 turbofan engines that have a serial number listed in Table 1, Table 2, or Table 3 of this AD;

(2) All model Tay 651–54 turbofan engines; and

(3) Engines with a low-pressure (LP) turbine module M05300AA installed. These engines are installed on, but not limited to, Fokker F.28 Mark 0070 and 0100 airplanes, and Boeing 727 airplanes modified in accordance with Supplemental Type Certificate No. SA8472SW.

TABLE 1—AFFECTED TAY 650–15 ENGINES BY SERIAL NUMBER (CARRIED FORWARD FROM AD 2008–10–14 AND AD 2009–22–01)

Engine Serial No.
17251
17255
17256
17273
17275
17280
17281
17282
17300
17301
17327
17332
17365
17393
17437
17443
17470
17520
17521
17523
17539

TABLE 1—AFFECTED TAY 650–15 ENGINES BY SERIAL NUMBER (CARRIED FORWARD FROM AD 2008–10–14 AND AD 2009–22–01)—Continued

Engine Serial No.
17542
17556
17561
17562
17563
17580
17581
17612
17618
17635
17637
17645
17661
17686
17699
17701
17702
17736
17737
17738
17739
17741
17742
17808

TABLE 2—AFFECTED TAY 650–15 ENGINES BY SERIAL NUMBER (CARRIED FORWARD FROM AD 2009–22–01)

Engine Serial No.
17249
17303
17358
17370
17425
17426
17433
17438
17445
17446
17460
17474
17478
17490
17491
17517
17518
17522
17534
17535
17536
17538
17540
17541
17552
17553
17585
17613
17723
17724
17740
17759
17760
17807

TABLE 3—AFFECTED TAY 650–15 ENGINES BY SERIAL NUMBER (ADDED NEW IN THIS AD)

Engine Serial No.
17344
17360
17376
17413
17537
17694
17698
17707
17716
17718
17719
17731
17756
17757

Reason

(d) Strip results from some of the engines listed in the applicability section of this AD revealed excessively corroded low-pressure turbine disks stage 2 and stage 3. The corrosion is considered to be caused by the environment in which these engines are operated. Following a life assessment based on the strip findings it is concluded that inspections for corrosion attack are required. The action specified by this European Aviation Safety Agency (EASA) AD 2008–0122 was intended to avoid a failure of a low-pressure turbine disk stage 2 or stage 3 due to potential corrosion problems which could result in uncontained engine failure and damage to the airplane. It has been later realized that the same unsafe condition could potentially occur on more serial numbers for the Tay 650–15 engines and on the Tay 651–54 engines. This AD, superseding EASA AD 2008–0122, retaining its requirements, is therefore issued to expand the Applicability in adding further engine serial numbers for the Tay 650–15 engines and in adding the Tay 651–54 engines.

We are issuing this AD to detect corrosion that could cause the stage 2 or stage 3 disk of the LP turbine to fail and result in an uncontained failure of the engine.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Prior to accumulating 11,700 flight cycles (FC) since new of disk life, and thereafter at intervals not exceeding 11,700 FC of disk life, inspect the LP turbine disks stage 2 and stage 3 for corrosion using RRD Alert Service Bulletin (ASB) No. TAY–72–A1524, Revision 3, dated March 24, 2010.

(2) For engines with disk life that already exceed 11,700 FC on the effective date of this AD, perform the inspection within 90 days after the effective date of this AD.

(3) When, during any of the inspections as required by paragraphs (e)(1) and (e)(2) of this AD, corrosion is found, replace the affected parts. RRD TAY 650 Engine Manual—E–TAY–3RR, Tasks 72–52–23–200–000 and 72–52–24–200–000, and RRD TAY 651 Engine Manual—E–TAY–5RR, Tasks 72–52–23–200–000 and 72–52–24–200–000, contain guidance on performing the

inspection for corrosion and rejection criteria.

Previous Credit

(f) Initial inspections done before the effective date of this AD on LP turbine disks stage 2 and stage 3 listed in Table 1 and Table 2 of this AD using RRD ASB No. TAY–72–A1524, Revision 1, dated September 1, 2006, or Revision 2, dated June 13, 2008, comply with the initial inspection requirements specified in this AD.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to EASA AD 2010–060R1, dated April 14, 2010, for related information. Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlwitz, 15827 Blankenfelde-Mahlow, Germany; phone: 011 49 (0) 33–7086–1883; fax: 011 49 (0) 33–7086–3276, for a copy of the service information referenced in this AD.

(i) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov; phone:* (781) 238–7758; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use RRD Alert Service Bulletin No. TAY–72–A1524, Revision 3, dated March 24, 2010, to do the inspections required by this AD.

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

(2) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlwitz, 15827 Blankenfelde-Mahlow, Germany; phone: 011 49 (0) 33–7086–1883; fax: 011 49 (0) 33–7086–3276.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 6, 2010.

Peter A. White,

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

[FR Doc. 2010–20657 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1157; Directorate Identifier 2009–NE–26–AD; Amendment 39–16402; AD 2010–17–10]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–22B and RB211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

Several low pressure turbine (LPT) shafts have been found with cracks originating from the rear cooling air holes. The cracks were found at normal component overhaul, by the standard Magnetic Particle Inspection (MPI) technique defined in the associated engine manual. The cracks have been found to initiate from corrosion pits. Propagation of a crack from the rear cooling air holes may result in shaft failure and subsequently in an uncontained Low Pressure Turbine failure. For the reasons stated above, this AD requires the inspection of the affected engines' LPT shafts and replacement of the shaft, as necessary.

We are issuing this AD to detect cracks, initiated by corrosion pits, originating from the rear cooling air holes, which could result in shaft failure and subsequently in an uncontained failure of the LPT and damage to the airplane.

DATES: This AD becomes effective September 27, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 27, 2010.

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

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 19, 2010 (75 FR 27964). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Several low pressure turbine (LPT) shafts have been found with cracks originating from the rear cooling air holes. The cracks were found at normal component overhaul, by the standard Magnetic Particle Inspection (MPI) technique defined in the associated engine manual. The cracks have been found to initiate from corrosion pits. Propagation of a crack from the rear cooling air holes may result in shaft failure and subsequently in an uncontained Low Pressure Turbine failure. For the reasons stated above, this AD requires the inspection of the affected engines' LPT shafts and replacement of the shaft, as necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter supports the NPRM.

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 10 products of U.S. registry. We also estimate that it will take about 7 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $15,000 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $155,950.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–17–10 Rolls-Royce plc: Amendment 39–16402. Docket No. FAA–2009–1157; Directorate Identifier 2009–NE–26–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 27, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc RB211–22B series and RB211–524B4–D–02, RB211–524D4–19, RB211–524D4–39, RB211–524D4–B–19, RB211–524D4–B–39, RB211–524D4X–19, and RB211–524D4X–B–19 model turbofan engines. These engines are installed on, but not limited to, Boeing 747 series and Lockheed L–1011 series airplanes.

Reason

(d) This AD results from:

Several low pressure turbine (LPT) shafts have been found with cracks originating from the rear cooling air holes. The cracks were found at normal component overhaul, by the standard Magnetic Particle Inspection (MPI) technique defined in the associated engine manual. The cracks have been found to initiate from corrosion pits. Propagation of a crack from the rear cooling air holes may result in shaft failure and subsequently in an uncontained Low Pressure Turbine failure. For the reasons stated above, this AD requires the inspection of the affected engines' LPT shafts and replacement of the shaft, as necessary.

We are issuing this AD to detect cracks, initiated by corrosion pits, originating from the rear cooling air holes, which could result in shaft failure and subsequently in an uncontained failure of the LPT and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

Initial Inspection Requirements

(1) At the next engine shop visit after the effective date of this AD when the LPT shaft is completely disassembled to piece-part level, inspect the LPT shaft using paragraphs 3.A.(1)(a) through 3.A.(4)(l) of the accomplishment instructions of Rolls-Royce Service Bulletin RB.211–72–AF336, dated October 24, 2007.

Repetitive Inspection Requirements

(2) Thereafter, reinspect the LPT shaft using paragraphs 3.A.(1)(a) through 3.A.(4)(l) of the accomplishment instructions of Rolls-Royce Service Bulletin RB.211–72–AF336, dated October 24, 2007 and the following schedule in Table 1 of this AD:

TABLE 1—REPETITIVE INSPECTION INTERVAL BY ENGINE MODEL

Engine model	Maximum time between inspections (engine cycles)
(i) RB211–22B Series, all models	3,500.
(ii) RB211–524B4–D–02	4,000.
(iii) RB211–524D4–19, RB211–524D4–39, RB211–524D4–B–19, RB211–524D4–B–39, RB211–524D4X–19 and RB211–524D4X–B–19.	At the next engine shop visit after the last inspection.

Remove Parts With Cracks

(3) Remove cracked LPT shafts, found using paragraphs (e)(1) or (e)(2) of this AD, from service before further flight.

Definitions

(4) For the purpose of this AD, an engine shop visit is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges. The separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to MCAI EASA Airworthiness Directive 2007–0310 R1, dated January 8, 2008, for related information.

(h) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(i) You must use Rolls-Royce Service Bulletin RB.211–72–AF336, dated October 24, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone 044 1332 242424; fax 044 1332 249936.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 5, 2010.

Peter A. White,

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

[FR Doc. 2010–20705 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0776; Directorate Identifier 2009–NE–32–AD; Amendment 39–16403; AD 2010–17–11]

RIN 2120–AA64

Airworthiness Directives; Dowty Propellers R408/6–123–F/17 Model Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

Friction or contact between a propeller de-ice bus bar and the backplate assembly can cause failure of the bus bar and a consequent intermittent short circuit. Such a short circuit can cause a dual AC generator shutdown that, particularly in conjunction with an engine failure in icing conditions, could result in reduced controllability of the airplane.

We are issuing this AD to prevent an in-flight double generator failure, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective September 27, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 27, 2010.

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

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: michael.schwetz@faa.gov;* telephone (781) 238–7761; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 25, 2009 (74 FR 48870). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Friction or contact between a propeller de-ice bus bar and the backplate assembly can cause failure of the bus bar and a consequent intermittent short circuit. Such a short circuit can cause a dual AC generator shutdown that, particularly in conjunction with an engine failure in icing conditions, could result in reduced controllability of the airplane.

Comments

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

One commenter, a private citizen, requests that the AD allow propellers modified under earlier revisions of the service bulletin to meet the requirements of the AD, as the modification instructions are the same.

We agree. We added a paragraph that allows for previous credit for initial sealant application done before the effective date of the AD using earlier versions of the service bulletin. We also reference using Dowty Propellers Alert Service Bulletin No. D8400–61–A66, Revision 5, dated June 16, 2010 in the compliance section, which is the latest version. Since Revision 5 of the ASB requires repetitive applications of sealant, we eliminated the AD differences that appeared in the proposed AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 104 propellers installed on airplanes of U.S. registry. We also estimate that it will take about 2 work-hours per propeller to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $20 per propeller. Based on these figures, we estimate the cost of the AD on U.S. operators to be $18,720.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–17–11 Dowty Propellers (formerly Dowty Aerospace; Dowty Rotol Limited; and Dowty Rotol): Amendment 39–16403. Docket No. FAA–2009–0776; Directorate Identifier 2009–NE–32–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 27, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dowty Propellers R408/6–123–F/17 model propellers. These propellers are installed on, but not limited to, Bombardier, Inc. (formerly de Havilland Canada) models DHC–8–400, DHC–8–401, and DHC–8–402 series airplanes.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to prevent an in-flight double generator failure, which could result in reduced controllability of the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) For R408/6–123–F/17 model propellers with a hub, actuator, and backplate assembly line-replaceable unit serial numbers below DAP0347, do the following initial sealant application within 5,000 flight hours (FH) after the effective date of this AD:

(i) Apply sealant between the bus bar assemblies and the backplate assembly.

(ii) Use paragraph 3 of the Accomplishment Instructions of Dowty Propellers Alert Service Bulletin No. D8400–61–A66, Revision 5, dated June 16, 2010, to do the sealant application.

(2) Thereafter, for all R408/6–123–F/17 model propellers, re-apply sealant as specified in paragraphs (e)(1)(i) through (e)(1)(ii) within every additional 10,000 FH.

Installation Prohibition

(3) After modification of all propellers on an airplane as required by paragraph (e)(1) of this AD, do not install any Dowty R408/6–123–F/17 propeller on that airplane unless sealant has been applied between the bus bar assemblies and the backplate assembly of that propeller using the requirements of this AD.

FAA AD Differences

(f) None.

Previous Credit

(g) Sealant application performed before the effective date of this AD using Dowty Propellers Service Bulletin No. D8400–61–66, dated February 9, 2007, Revision 1, dated May 4, 2007, Alert Service Bulletin No. D8400–61–A66, Revision 2, dated August 19, 2009, Revision 3, dated November 10, 2009, Revision 4, dated January 19, 2010, or Revision 5, dated June 16, 2010, satisfies the initial sealant application requirement of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to EASA AD 2009–0114, dated May 28, 2009, for related information.

(j) Contact Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: michael.schwetz@faa.gov;* telephone (781) 238–7761; fax (781) 238–7170, for more information about this AD.

Material Incorporated by Reference

(k) You must use Dowty Propellers Alert Service Bulletin No. D8400–61–A66, Revision 5, dated June 16, 2010, to do the actions required by this AD.

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

(2) For service information identified in this AD, contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; telephone: 44 (0) 1452 716000; fax: 44 (0) 1452 716001.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 5, 2010.

Peter A. White,

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

[FR Doc. 2010–20707 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0245; Directorate Identifier 2010–NE–15–AD; Amendment 39–16398; AD 2010–17–06]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. (P&WC) PW615F–A Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the Fuel Oil Heat Exchanger (FOHE) on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the Fuel Metering Unit (FMU), resulting in fuel flow drop and subsequent power reduction. P&WC has confirmed that this is a dormant failure that could result in an unsafe condition.

The PW615F–A engine Fuel Filter Bypass Valve installation is very similar to that of PW617F–E, but so far there have been no operational abnormalities reported due to subject valve failure on PW615F–A engines. However, evaluation by P&WC has confirmed similar dormant failure of worn through poppets of the subject valve on some PW615F–A engine installations, which could affect both engines at the same time on an aircraft and may result in an unsafe condition.

We are issuing this AD to prevent uncommanded power reduction, which could result in the inability to continue safe flight and safe landing.

DATES: This AD becomes effective September 27, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 27, 2010.

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 17, 2010 (75 FR 27489). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

> A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the Fuel Oil Heat Exchanger (FOHE) on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the Fuel Metering Unit (FMU), resulting in fuel flow drop and subsequent power reduction. P&WC has confirmed that this is a dormant failure that could result in an unsafe condition.
>
> The PW615F–A engine Fuel Filter Bypass Valve installation is very similar to that of PW617F–E, but so far there have been no operational abnormalities reported due to subject valve failure on PW615F–A engines. However, evaluation by P&WC has confirmed similar dormant failure of worn through poppets of the subject valve on some PW615F–A engine installations, which could affect both engines at the same time on an aircraft and may result in an unsafe condition.
>
> P&WC on 9 December 2009, issued an alert Service Bulletin (SB) A63071 that introduced a new Fuel Filter Bypass Valve assembly with an improved design poppet to help alleviate the subject poppet wear problem. This airworthiness directive (AD) is issued to mandate replacement of FOHE Fuel Filter Bypass Valve on all PW615F–A engines as per the P&WC SB A63071 instructions.

Comments

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

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 378 engines installed on airplanes of U.S. registry. We also estimate that it will take about 3.5 work-hours per engine to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $22,582 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $8,648,451.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–17–06 Pratt & Whitney Canada Corp. (formerly Pratt & Whitney Canada, Inc.): Amendment 39–16398. Docket No. FAA–2010–0245; Directorate Identifier 2010–NE–15–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 27, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada Corp. PW615F–A turbofan engines with fuel/oil heat exchanger (FOHE) part number (P/N) 35C3778–01 or P/N 35C3778–02 installed. These engines are installed on, but not limited to, Cessna 510 (Mustang) airplanes.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the Fuel Oil Heat Exchanger (FOHE) on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the Fuel Metering Unit (FMU), resulting in fuel flow drop and subsequent power reduction. P&WC has confirmed that this is a dormant failure that could result in an unsafe condition.

The PW615F–A engine Fuel Filter Bypass Valve installation is very similar to that of PW617F–E, but so far there have been no operational abnormalities reported due to subject valve failure on PW615F–A engines. However, evaluation by P&WC has confirmed similar dormant failure of worn through poppets of the subject valve on some PW615F–A engine installations, which could affect both engines at the same time on an aircraft and may result in an unsafe condition.

We are issuing this AD to prevent uncommanded power reduction, which could result in the inability to continue safe flight and safe landing.

Actions and Compliance

(e) Unless already done, replace the FOHE fuel filter bypass poppet valve with a larger fuel filter bypass poppet valve within 25 hours of the effective date of the AD. Use paragraph 3.A. of the Accomplishment Instructions of Pratt & Whitney Canada Corp. Alert Service Bulletin (ASB) No. PW600–72–A63071, Revision 1, dated January 7, 2010, to do the replacement.

Previous Credit

(f) A fuel filter bypass poppet valve replacement performed before the effective date of this AD using Pratt & Whitney Canada Corp. ASB No. PW600–72–A63071, dated December 9, 2009, satisfies the replacement requirement of this AD.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI Transport Canada AD CF–2010–03, dated January 20, 2010, for related information. Contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; telephone 800–268–8000; fax 450–647–2888; Web site: *http://www.pwc.ca*, for a copy of this service information.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Pratt & Whitney Canada Corp. ASB No. PW600–72–A63071, Revision 1, dated January 7, 2010 to do the replacement required by this AD.

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

(2) For service information identified in this AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; telephone 800–268–8000; fax 450–647–2888; Web site: *http://www.pwc.ca.*

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 4, 2010.

Peter A. White,

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

[FR Doc. 2010–20712 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0246; Directorate Identifier 2010–NE–16–AD; Amendment 39–16391; AD 2010–17–01]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. PW617F–E Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the Fuel Oil Heat Exchanger (FOHE) on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the Fuel Metering Unit (FMU), resulting in fuel flow drop and subsequent power reduction.

Pratt & Whitney Canada Corp. issued an Alert Service Bulletin (ASB) No. PW600–72–A66019 to inspect and replace any discrepant valve with the same type new valve. The inspection results confirmed that failure of a worn through poppet is dormant and it can affect both engines at the same time that could result in an unsafe condition on PW617F–E powered aircraft.

We are issuing this AD to prevent uncommanded power reduction, which could result in the inability to continue safe flight and safe landing.

DATES: This AD becomes effective September 27, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 27, 2010.

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; *e-mail: james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 17, 2010 (75 FR 27491). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the FOHE on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the FMU, resulting in fuel flow drop and subsequent power reduction.

Pratt & Whitney Canada Corp. issued an ASB No. PW600–72–A66019 to inspect and replace any discrepant valve with the same type new valve. The inspection results confirmed that failure of a worn through poppet is dormant and it can affect both engines at the same time that could result in an unsafe condition on PW617F–E powered aircraft.

On November 23, 2009, Pratt & Whitney Canada Corp. issued an ASB No. PW600–72–A66021 that introduced a new fuel Filter Bypass Valve Assembly with an improved design poppet to help alleviate the subject poppet wear problem. This AD is issued to mandate replacement of the FOHE fuel filter bypass valve on all PW617F–E engines as per Pratt & Whitney Canada Corp. ASB No. PW600–72–A66021 instructions.

Comments

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

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 77 engines installed on airplanes of U.S. registry. We also estimate that it will take about 3.5 work-hours per engine to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $22,582 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,761,722.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–17–01 Pratt & Whitney Canada Corp. (formerly Pratt & Whitney Canada, Inc.): Amendment 39–16391. Docket No. FAA–2010–0246; Directorate Identifier 2010–NE–16–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 27, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada Corp. PW617F–E turbofan engines with fuel/oil heat exchanger (FOHE) part number (P/N) 35C4540–01 installed. These engines are installed on, but not limited to, Empresa Brasileira de Aeronáutica S.A (EMB) 500 airplanes.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the FOHE on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the Fuel Metering Unit, resulting in fuel flow drop and subsequent power reduction.

Pratt & Whitney Canada Corp. issued an Alert Service Bulletin (ASB) No. PW600–72–A66019 to inspect and replace any discrepant valve with the same type new valve. The inspection results confirmed that failure of a worn through poppet is dormant and it can affect both engines at the same time that could result in an unsafe condition on PW617F–E powered aircraft.

We are issuing this AD to prevent uncommanded power reduction, which could result in the inability to continue safe flight and safe landing.

Actions and Compliance

(e) Unless already done, replace the FOHE fuel filter bypass poppet valve with a larger fuel filter bypass poppet valve within 25 hours of the effective date of the AD. Use paragraph 3.A. of the Accomplishment Instructions of Pratt & Whitney Canada Corp. ASB No. PW600–72–A66021, Revision 1, dated January 7, 2010, to do the replacement.

Previous Credit

(f) A fuel filter bypass poppet valve replacement performed before the effective date of this AD using Pratt & Whitney Canada Corp. ASB No. PW600–72–A66021, dated November 23, 2009, satisfies the replacement requirement of this AD.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI Transport Canada Airworthiness Directive CF–2010–02, dated January 20, 2010, for related information.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; *e-mail: james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Pratt & Whitney Canada Corp. ASB No. PW600–72–A66021, Revision 1, dated January 7, 2010 to do the replacement required by this AD.

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

(2) For service information identified in this AD, contact Contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1;

telephone 800–268–8000; fax 450–647–2888; *Web site: http://www.pwc.ca.*

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on July 30, 2010.

Peter A. White,

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

[FR Doc. 2010–20714 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0187; Airspace Docket No. 09–AWP–10]

RIN 2120–AA66

Amendment of the Pacific High and Low Offshore Airspace Areas; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Pacific High and Low Offshore Airspace Areas to provide additional airspace in which domestic air traffic control procedures can be used to separate and manage aircraft operations in the currently uncontrolled airspace off the California coast. This change will enhance the efficient utilization of that airspace within the National Airspace System.

DATES: Effective date 0901 UTC, November 18, 2010. 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: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On Monday, June 7, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify the Pacific High and Low Control Areas (75 FR 32119). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. The proposed legal description contained the exclusion of active warning area airspace; it was brought to our attention that it was not necessary to exclude active warning areas in the description since active warning areas are excluded by policy. With this exception, this amendment is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the Pacific High and Low Offshore Airspace Areas, by extending the present airspace boundaries further southeast of the current location to the Mexico FIR capturing pockets of uncontrolled airspace off the California coast. This modification will allow the application of domestic ATC separation procedures in lieu of ICAO separation and enhance system capacity and allow for more efficient utilization of that airspace.

Offshore airspace areas are published in paragraph 2003 and 6007, respectfully, of FAA Order 7400.9T signed August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The offshore airspace listed in this document will be published subsequently in the Order.

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 Department of Transportation (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 United States Code. 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.

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 the 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 modifies the high and low offshore airspace areas off the coast of California.

ICAO Considerations

As part of this action relates to navigable airspace outside the United States, this notice is submitted in accordance with the ICAO International Standards and Recommended Practices. The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace and Rules Group, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting State, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting State accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting State accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, State-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting State to the Convention. Article 3(d) of the Convention provides that participating State aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009 and effective September 15, 2009, is amended as follows:

Paragraph 2003 Offshore Airspace Areas

* * * * *

Pacific High, CA [Amended]

That airspace extending upward from 18,000 feet MSL to and including FL 600 bounded on the north by the Vancouver FIR boundary, on the east by a line 12 miles from and parallel to the U.S. shoreline, and on the south by the Mexico FIR boundary, and on the west by the Oakland Oceanic CTA/FIR boundary.

* * * * *

Paragraph 6007 Offshore Airspace Areas

* * * * *

Pacific Low, CA [Amended]

That airspace extending upward from 5,500 feet MSL bounded on the north by the Vancouver FIR boundary, on the east by a line 12 miles from and parallel to the U.S. shoreline, and on the south by the Mexico FIR boundary, and on the west by the Oakland Oceanic FIR boundary.

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

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–20806 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0365; Airspace Docket No. 10–AAL–12]

RIN 2120–AA66

Amendment of Colored Federal Airway B–38; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Colored Federal Airway Blue 38 (B–38), in Alaska. Specifically, this action removes a segment of B–38 from Haines Non-directional Beacon (NDB) to the Whitehorse, Yukon Territories Canada (XY NDB). The FAA is taking this action in preparation of the eventual decommissioning of XY NDB by the Canadian Air Authority NAV CANADA.

DATES: Effective date 0901 UTC, November 18, 2010. 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: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 7, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Colored Federal Airway B–38 in Alaska, (75 FR 32117). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. This amendment is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Colored Federal Airway B–38, Alaska, terminating the airway at the HNS NDB, AK, instead of the XY NDB, Canada. The Canadian Air Authority NAV CANADA recently conducted a study to determine the feasibility of keeping the XY NDB operational. NAV CANADA determined it is no longer feasible and will be decommissioning the XY NDB.

Blue Federal Airways are published in paragraph 6009(d) of FAA Order 7400.9T, signed August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Colored Federal Airway listed in this document will be published subsequently in the Order.

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 Department of Transportation (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 United States Code. 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.

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 the 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 modifies a Colored Federal Airway in Alaska.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Polices and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

Paragraph 6009 (d) Blue Federal airways.

* * * * *

B–38 [Amended]

From Elephant, AK, NDB, to Haines, AK, NDB.

Issued in Washington, DC, on August 12, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–20807 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30738; Amdt. No. 3386]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 23, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2010.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff

Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on August 6, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Shungnak, AK, Shungnak, RNAV (GPS) RWY 9, Amdt 1
Shungnak, AK, Shungnak, RNAV (GPS) RWY 27, Amdt 1
Bessemer, AL, Bessemer, GPS RWY 23, Orig-A, CANCELLED
Bessemer, AL, Bessemer, ILS OR LOC RWY 5, Amdt 2
Bessemer, AL, Bessemer, RNAV (GPS) RWY 5, Amdt 1
Bessemer, AL, Bessemer, RNAV (GPS) RWY 23, Orig
Vernon, AL, Lamar County, Takeoff Minimums and Obstacle DP, Amdt 2
Lincoln, CA, Lincoln Rgnl/Karl Harder Field, ILS OR LOC RWY 15, Amdt 1
Lincoln, CA, Lincoln Rgnl/Karl Harder Field, RNAV (GPS) RWY 15, Orig
Paso Robles, CA, Paso Robles Muni, RNAV (GPS) RWY 19, Orig
Paso Robles, CA, Paso Robles Muni, VOR/DME RWY 19, Amdt 4
Paso Robles, CA, Paso Robles Muni, VOR/DME–B, Amdt 3
Paso Robles, CA, Paso Robles Muni, VOR OR GPS–A, Amdt 1, CANCELLED
Santa Rosa, CA, Charles M Schulz-Sonoma County, RNAV (GPS) RWY 14, Amdt 1
Colorado Springs, CO, City of Colorado Springs Muni, ILS OR LOC RWY 17L, Amdt 1
Colorado Springs, CO, City of Colorado Springs Muni, ILS OR LOC RWY 35L, Amdt 37
Colorado Springs, CO, City of Colorado Springs Muni, ILS OR LOC RWY 35R, Amdt 1
Colorado Springs, CO, City of Colorado Springs Muni, NDB RWY 35L, Amdt 26
Colorado Springs, CO, City of Colorado Springs Muni, RNAV (GPS) RWY 31, Amdt 1
Colorado Springs, CO, City of Colorado Springs Muni, RNAV (GPS) Y RWY 17L, Amdt 1
Colorado Springs, CO, City of Colorado Springs Muni, RNAV (GPS) Y RWY 35L, Orig
Colorado Springs, CO, City of Colorado Springs Muni, RNAV (GPS) Y RWY 35R, Amdt 3
Colorado Springs, CO, City of Colorado Springs Muni, Takeoff Minimums and Obstacle DP, Amdt 9
Longmont, CO, Vance Brand, RNAV (GPS) RWY 29, Amdt 1A
Windsor Locks, CT, Bradley Intl, RNAV (GPS) Y RWY 15, Amdt 1A
Palatka, FL, Palatka Muni-Lt. Kay Larkin Field, NDB RWY 9, Amdt 3
Palatka, FL, Palatka Muni-Lt. Kay Larkin Field, RNAV (GPS) RWY 9, Orig
Palatka, FL, Palatka Muni-Lt. Kay Larkin Field, RNAV (GPS) RWY 27, Orig
Tifton, GA, Henry Tift Myers, NDB RWY 33, Amdt 1
Tifton, GA, Henry Tift Myers, RNAV (GPS) RWY 28, Orig
Tifton, GA, Henry Tift Myers, RNAV (GPS) RWY 33, Orig
Tifton, GA, Henry Tift Myers, VOR RWY 28, Amdt 10
Cedar Rapids, IA, The Eastern Iowa, RNAV (GPS) RWY 8, Orig, CANCELLED
Cedar Rapids, IA, The Eastern Iowa, RNAV (GPS) RWY 9, Amdt 2
Cedar Rapids, IA, The Eastern Iowa, RNAV (GPS) RWY 26, Orig, CANCELLED
Cedar Rapids, IA, The Eastern Iowa, Takeoff Minimums and Obstacle DP, Amdt 4
Cedar Rapids, IA, The Eastern Iowa, VOR RWY 26, Orig, CANCELLED
Cedar Rapids, IA, The Eastern Iowa, VOR/DME RWY 8, Orig, CANCELLED
Cedar Rapids, IA, The Eastern Iowa, VOR/DME RWY 9, Amdt 17
Fort Madison, IA, Fort Madison Muni, RNAV (GPS) RWY 17, Orig
Fort Madison, IA, Fort Madison Muni, RNAV (GPS) RWY 35, Orig
Fort Madison, IA, Fort Madison Muni, Takeoff Minimums and Obstacle DP, Orig
Fort Madison, IA, Fort Madison Muni, VOR/DME–A, Amdt 7
Fort Madison, IA, Fort Madison Muni, VOR/DME RNAV OR GPS RWY 16, Amdt 4A, CANCELLED
Fort Madison, IA, Fort Madison Muni, VOR/DME RNAV OR GPS RWY 34, Amdt 4A, CANCELLED
Jefferson, IA, Jefferson Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Cahokia/St Louis, IL, St. Louis Downtown, Takeoff Minimum and Obstacle DP, Amdt 8
Champaign/Urbana, IL, University of Illinois-Willard, GPS RWY 18, Orig-B, CANCELLED
Champaign/Urbana, IL, University of Illinois-Willard, GPS RWY 36, Orig-B, CANCELLED
Champaign/Urbana, IL, University of Illinois-Willard, LOC/DME BC RWY 14L, Amdt 8
Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 14L, Orig
Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 18, Orig
Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 22, Amdt 1
Champaign/Urbana, IL, University of Illinois-Willard, RNAV (GPS) RWY 36, Orig
Champaign/Urbana, IL, University of Illinois-Willard, VOR/DME RWY 14L, Orig-A
Harrisburg, IL, Harrisburg-Raleigh, NDB RWY 24, Amdt 11
Harrisburg, IL, Harrisburg-Raleigh, RNAV (GPS) RWY 6, Amdt 1
Harrisburg, IL, Harrisburg-Raleigh, RNAV (GPS) RWY 24, Amdt 2
Harrisburg, IL, Harrisburg-Raleigh, Takeoff Minimums and Obstacle DP, Amdt 1
Norton, KS, Norton Muni, NDB RWY 16, Amdt 2
Norton, KS, Norton Muni, NDB RWY 34, Amdt 2
Norton, KS, Norton Muni, RNAV (GPS) RWY 16, Amdt 1
Norton, KS, Norton Muni, RNAV (GPS) RWY 34, Amdt 1
Greenville, KY, Muhlenberg County, RNAV (GPS) RWY 23, Orig
Greenville, KY, Muhlenberg County, VOR/DME–A, Amdt 5
New Orleans, LA, Louis Armstrong New Orleans Intl, ILS OR LOC RWY 28, Amdt 8
New Orleans, LA, Louis Armstrong New Orleans Intl, LOC RWY 19, Amdt 2
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (GPS) Y RWY 10, Amdt 1
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (GPS) Y RWY 19, Amdt 2
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (RNP) Z RWY 10, Orig
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (RNP) Z RWY 19, Orig
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (RNP) Z RWY 28, Orig
Baltimore, MD, Baltimore-Washington Intl Thurgood Marshall, Takeoff Minimums and Obstacle DP, Amdt 9

Baltimore, MD, Martin State, ILS OR LOC RWY 33, Amdt 7, CANCELLED
Baltimore, MD, Martin State, LDA RWY 33, Orig
Muskegon, MI, Muskegon County, ILS OR LOC RWY 24, Amdt 5
Muskegon, MI, Muskegon County, RNAV (GPS) RWY 6, Amdt 1
Muskegon, MI, Muskegon County, RNAV (GPS) RWY 24, Amdt 1
Farmington, MO, Farmington Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5
Rolla/Vichy, MO, Rolla National, GPS RWY 4, Orig, CANCELLED
Rolla/Vichy, MO, Rolla National, RNAV (GPS) RWY 4, Orig
Rolla/Vichy, MO, Rolla National, RNAV (GPS) RWY 22, Orig
Rolla/Vichy, MO, Rolla National, Takeoff Minimums and Obstacle DP, Orig
Rolla/Vichy, MO, Rolla National, VOR RWY 22, Amdt 8
Rolla/Vichy, MO, Rolla National, VOR/DME RWY 4, Amdt 3
Rolla/Vichy, MO, Rolla National, VOR/DME RNAV OR GPS RWY 22, Amdt 2C, CANCELLED
St Joseph, MO, Rosecrans Memorial, RNAV (GPS) RWY 35, Amdt 1
St Louis, MO, Spirit of St. Louis, Takeoff Minimums and Obstacle DP, Amdt 1
Missoula, MT, Missoula Intl, GPS–D, Orig-A, CANCELLED
Missoula, MT, Missoula Intl, ILS Y RWY 11, Orig
Missoula, MT, Missoula Intl, ILS Z RWY 11, Amdt 12
Missoula, MT, Missoula Intl, RNAV (GPS)-D, Orig
Missoula, MT, Missoula Intl, VOR/DME–A, Amdt 12
Missoula, MT, Missoula Intl, VOR/DME–B, Amdt 6
Elizabethtown, NC, Curtis L Brown JR Field, GPS RWY 15, Orig, CANCELLED
Elizabethtown, NC, Curtis L Brown JR Field, GPS RWY 33, Orig, CANCELLED
Elizabethtown, NC, Curtis L Brown JR Field, RNAV (GPS) RWY 15, Orig
Elizabethtown, NC, Curtis L Brown JR Field, RNAV (GPS) RWY 33, Orig
Elizabethtown, NC, Curtis L Brown JR Field, VOR/DME RWY 15, Amdt 2
Jefferson, NC, Ashe County, LOC RWY 28, Amdt 2
Alliance, NE, Alliance Muni, ILS OR LOC/DME RWY 30, Orig
Alliance, NE, Alliance Muni, LOC/DME RWY 30, Orig-B, CANCELLED
Alliance, NE, Alliance Muni, RNAV (GPS) RWY 30, Amdt 1
Hammonton, NJ, Hammonton Muni, RNAV (GPS) RWY 3, Amdt 1
Hammonton, NJ, Hammonton Muni, VOR–A, Amdt 7
Hammonton, NJ, Hammonton Muni, VOR–B, Amdt 2
Newark, NJ, Newark Liberty Intl, ILS OR LOC RWY 11, Amdt 2
Newark, NJ, Newark Liberty Intl, ILS OR LOC RWY 22R, Amdt 5
Deming, NM, Deming Muni, RNAV (GPS) RWY 4, Amdt 1
Deming, NM, Deming Muni, RNAV (GPS) RWY 8, Orig
Deming, NM, Deming Muni, RNAV (GPS) RWY 22, Orig
Weedsport, NY, Whitfords, VOR–A, Orig-B, CANCELLED
Columbus, OH, Port Columbus Intl, RNAV (GPS) Y RWY 10L, Amdt 2
Columbus, OH, Port Columbus Intl, RNAV (GPS) Y RWY 10R, Amdt 2
Columbus, OH, Port Columbus Intl, RNAV (GPS) Y RWY 28L, Amdt 2
Columbus, OH, Port Columbus Intl, RNAV (GPS) Y RWY 28R, Amdt 1
Columbus, OH, Port Columbus Intl, RNAV (RNP) Z RWY 10L, Orig
Columbus, OH, Port Columbus Intl, RNAV (RNP) Z RWY 10R, Orig
Columbus, OH, Port Columbus Intl, RNAV (RNP) Z RWY 28L, Orig
Columbus, OH, Port Columbus Intl, RNAV (RNP) Z RWY 28R, Orig
Dayton, OH, James M Cox Dayton Intl, RADAR–1, Amdt 9, CANCELLED
Mansfield, OH, Mansfield Lahm Rgnl, RNAV (GPS) RWY 5, Orig
Mansfield, OH, Mansfield Lahm Rgnl, RNAV (GPS) RWY 23, Orig
Mansfield, OH, Mansfield Lahm Rgnl, VOR/DME RNAV OR GPS RWY 23, Amdt 6A, CANCELLED
Blackwell, OK, Blackwell-Tonkawa Muni, GPS RWY 17, Orig-A, CANCELLED
Blackwell, OK, Blackwell-Tonkawa Muni, GPS RWY 35, Orig-A, CANCELLED
Blackwell, OK, Blackwell-Tonkawa Muni, RNAV (GPS) RWY 17, Orig
Blackwell, OK, Blackwell-Tonkawa Muni, RNAV (GPS) RWY 35, Orig
Blackwell, OK, Blackwell-Tonkawa Muni, VOR–A, Amdt 4
Duncan, OK, Halliburton Field, LOC RWY 35, Amdt 5
Duncan, OK, Halliburton Field, RNAV (GPS) RWY 17, Amdt 1
Duncan, OK, Halliburton Field, RNAV (GPS) RWY 35, Amdt 1
Duncan, OK, Halliburton Field, VOR RWY 35, Amdt 12
Shawnee, OK, Shawnee Rgnl, ILS OR LOC RWY 17, Amdt 2
Shawnee, OK, Shawnee Rgnl, RNAV (GPS) RWY 17, Amdt 1
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 8, Amdt 1
Tulsa, OK, Tulsa Intl, RNAV (GPS) Y RWY 26, Amdt 3
Tulsa, OK, Tulsa Intl, VOR/DME RWY 8, Amdt 4
Tulsa, OK, Tulsa Intl, VOR OR TACAN RWY 26, Amdt 24
Eugene, OR, Mahlon Sweet Field, GPS RWY 16R, Orig-C, CANCELLED
Eugene, OR, Mahlon Sweet Field, ILS OR LOC/DME RWY 16R, ILS RWY 16R (CAT II), ILS RWY 16R (CAT III), Amdt 36
Eugene, OR, Mahlon Sweet Field, ILS OR LOC Y RWY 16R, Orig, CANCELLED
Eugene, OR, Mahlon Sweet Field, RNAV (GPS) RWY 16R, Orig
Eugene, OR, Mahlon Sweet Field, RNAV (GPS) RWY 34L, Amdt 1
Eugene, OR, Mahlon Sweet Field, RNAV (GPS) RWY 34R, Amdt 1
Eugene, OR, Mahlon Sweet Field, Takeoff Minimums and Obstacle DP, Amdt 7
Eugene, OR, Mahlon Sweet Field, VOR–A, Amdt 7
Eugene, OR, Mahlon Sweet Field, VOR/DME OR TACAN RWY 16R, Amdt 5
Eugene, OR, Mahlon Sweet Field, VOR/DME OR TACAN RWY 34L, Amdt 5
Klamath Falls, OR, Klamath Falls, VOR/DME OR TACAN RWY 14, Am[illegible]A
Bradford, PA, Bradford Rgnl, ILS OR LOC RWY 32, Amdt 12
Bradford, PA, Bradford Rgnl, RNAV (GPS) RWY 14, Amdt 1
Bradford, PA, Bradford Rgnl, RNAV (GPS) RWY 32, Amdt 1
Bradford, PA, Bradford Rgnl, RNAV (GPS) Z RWY 14, Orig-A, CANCELLED
Bradford, PA, Bradford Rgnl, VOR RWY 14, Amdt 1
Bradford, PA, Bradford Rgnl, VOR/DME RWY 14, Amdt 10
Myrtle Beach, SC, Myrtle Beach Intl, ILS OR LOC RWY 18, Amdt 2
Myrtle Beach, SC, Myrtle Beach Intl, ILS OR LOC RWY 36, Amdt 2
Myrtle Beach, SC, Myrtle Beach Intl, RNAV (GPS) RWY 18, Amdt 2
Myrtle Beach, SC, Myrtle Beach Intl, RNAV (GPS) RWY 36, Amdt 2
Myrtle Beach, SC, Myrtle Beach Intl, VOR/DME–A, Amdt 1
North Myrtle Beach, SC, Grand Strand, GPS RWY 5, Orig-A, CANCELLED
North Myrtle Beach, SC, Grand Strand, GPS RWY 23, Orig-A, CANCELLED
North Myrtle Beach, SC, Grand Strand, RNAV (GPS) RWY 5, Orig
North Myrtle Beach, SC, Grand Strand, RNAV (GPS) RWY 23, Orig
Summerville, SC, Summerville, RNAV (GPS) RWY 24, Orig-A
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) Y RWY 13, Amdt 1A
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) Y RWY 31, Amdt 3
Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) Y RWY 35, Amdt 1A
Houston, TX, David Wayne Hooks Memorial, VOR/DME RNAV RWY 35L, Amdt 4, CANCELLED
Lubbock, TX, Lubbock Preston Smith Intl, RNAV (GPS) Y RWY 17R, Amdt 2
Lubbock, TX, Lubbock Preston Smith Intl, RNAV (GPS) Y RWY 35L, Amdt 2
Lubbock, TX, Lubbock Preston Smith Intl, RNAV (RNP) Z RWY 17R, Orig
Lubbock, TX, Lubbock Preston Smith Intl, RNAV (RNP) Z RWY 35L, Orig
Temple, TX, Draughon-Miller Central Texas Rgnl, RNAV (GPS) RWY 2, Amdt 1
Temple, TX, Draughon-Miller Central Texas Rgnl, RNAV (GPS) RWY 15, Amdt 2
Temple, TX, Draughon-Miller Central Texas Rgnl, RNAV (GPS) RWY 33, Amdt 2
Temple, TX, Draughon-Miller Central Texas Rgnl, Takeoff Minimum and Obstacle DP, Amdt 4
Temple, TX, Draughon-Miller Central Texas Rgnl, VOR RWY 15, Amdt 18
Temple, TX, Draughon-Miller Central Texas Rgnl, VOR RWY 33, Amdt 4
Waco, TX, Waco Rgnl, GPS RWY 1, Orig-B, CANCELLED
Waco, TX, Waco Rgnl, GPS RWY 19, Orig-B, CANCELLED
Waco, TX, Waco Rgnl, ILS OR LOC RWY 19, Amdt 16
Waco, TX, Waco Rgnl, RADAR–1, Amdt 4
Waco, TX, Waco Rgnl, RNAV (GPS) RWY 1, Orig
Waco, TX, Waco Rgnl, RNAV (GPS) RWY 19, Orig

Waco, TX, Waco Rgnl, Takeoff Minimums and Obstacle DP, Orig
Leesburg, VA, Leesburg Executive, LOC RWY 17, Amdt 3
Leesburg, VA, Leesburg Executive, RNAV (GPS) RWY 17, Amdt 2
Leesburg, VA, Leesburg Executive, Takeoff Minimums and Obstacle DP, Amdt 2
Leesburg, VA, Leesburg Executive, VOR OR GPS–A, Amdt 1B, CANCELLED
Spokane, WA, Spokane Intl, ILS OR LOC/DME RWY 21, ILS RWY 21 (CAT II), ILS RWY 21 (CAT III), Amdt 22
Spokane, WA, Spokane Intl, Takeoff Minimums and Obstacle DP, Amdt 6

[FR Doc. 2010–20394 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30739; Amdt. No. 3387]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 23, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 2010.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on August 6, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
23–Sep–10 ...	OK	Sand Springs	William R Pogue Muni	0/0508	7/15/10	NDB Rwy 35, Amdt 2E.
23–Sep–10 ...	OK	Sand Springs	William R Pogue Muni	0/1461	7/15/10	VOR/DME A, Amdt 3.
23–Sep–10 ...	AL	Clanton	Chilton County	0/1946	5/27/10	Takeoff Minimums and (Obstacle) Departure Procedures Orig.
23–Sep–10 ...	NH	Lebanon	Lebanon Muni	0/2536	7/19/10	VOR/DME Rwy 7, Amdt 1.
23–Sep–10 ...	NH	Lebanon	Lebanon Muni	0/2537	7/19/10	ILS Or LOC Rwy 18, Amdt 5A.
23–Sep–10 ...	NH	Berlin	Berlin RGNL	0/2958	7/21/10	VOR B, Amdt 2A.
23–Sep–10 ...	VT	Highgate	Franklin County State	0/2999	7/21/10	VOR/DME Rwy 19, Amdt 4.
23–Sep–10 ...	VT	Highgate	Franklin County State	0/3000	7/21/10	RNAV (GPS) Rwy 19, Orig.
23–Sep–10 ...	VT	Highgate	Franklin County State	0/3001	7/21/10	RNAV (GPS) Rwy 1, Amdt 2.
23–Sep–10 ...	NC	Raleigh/Durham	Raleigh-Durham Intl	0/4050	8/4/10	ILS Or LOC Rwy 23R, Amdt 11; ILS Rwy 23R (CAT II), Amdt 11; ILS Rwy 23R (CAT III), Amdt 11.
23–Sep–10 ...	CA	Hanford	Hanford Muni	0/4457	7/29/10	RNAV (GPS) Rwy 32, Amdt 1.
23–Sep–10 ...	MA	Boston	Gen Edward Lawrence Logan Intl	0/5074	7/15/10	RNAV (GPS) Rwy 27, Orig-A.
23–Sep–10 ...	MA	Boston	Gen Edward Lawrence Logan Intl	0/5075	7/15/10	RNAV (GPS) Rwy 32, Orig-A.
23–Sep–10 ...	MA	Boston	Gen Edward Lawrence Logan Intl	0/5076	7/15/10	RNAV (GPS) Rwy 22L, Orig.
23–Sep–10 ...	MA	Boston	Gen Edward Lawrence Logan Intl	0/5081	7/15/10	RNAV (GPS) Rwy 33L, Orig-B.
23–Sep–10 ...	MA	Boston	Gen Edward Lawrence Logan Intl	0/5082	7/15/10	RNAV (GPS) Rwy 15R, Orig-B.
23–Sep–10 ...	ME	Pittsfield	Pittsfield Muni	0/5401	7/7/10	NDB Rwy 36, Amdt 4.
23–Sep–10 ...	AK	Galena	Edward G. Pitka, Sr	0/5799	7/15/10	VOR/DME Rwy 25, Amdt 10.
23–Sep–10 ...	CQ	Saipan	Saipan/Francisco C. Ada/Saipan Intl ..	0/5800	6/10/10	GPS Rwy 25, Amdt 1B.
23–Sep–10 ...	AK	Galena	Edward G. Pitka, Sr	0/5801	7/15/10	VOR/DME Rwy 7, Amdt 7.
23–Sep–10 ...	AK	Nome	Nome	0/6640	6/22/10	RNAV (GPS) Rwy 3, Orig.
23–Sep–10 ...	AK	Nome	Nome	0/6641	6/22/10	RNAV (GPS) Rwy 10, Orig.
23–Sep–10 ...	AK	Nome	Nome	0/6642	6/22/10	NDB/DME Rwy 3, Amdt 2.
23–Sep–10 ...	AK	Nome	Nome	0/6643	6/22/10	NDB A, Orig.
23–Sep–10 ...	AK	Nome	Nome	0/6644	6/22/10	VOR Rwy 28, Amdt 2.
23–Sep–10 ...	AK	Nome	Nome	0/6645	6/22/10	VOR/DME Rwy 10, Amdt 2.
23–Sep–10 ...	AK	Clarks Point	Clarks Point	0/6649	7/15/10	RNAV (GPS) Rwy 18, Orig.
23–Sep–10 ...	AK	Clarks Point	Clarks Point	0/6652	7/15/10	RNAV (GPS) Rwy 36, Orig.
23–Sep–10 ...	AK	Quinhagak	Quinhagak	0/7691	7/15/10	RNAV (GPS) Rwy 12, Orig.
23–Sep–10 ...	AK	Quinhagak	Quinhagak	0/7692	7/15/10	RNAV (GPS) Rwy 30, Orig.
23–Sep–10 ...	MA	Boston	Gen Edward Lawrence Logan Intl	0/8349	7/15/10	ILS Or LOC Rwy 4R, Amdt 9B.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
23–Sep–10 ...	MA	Boston	Gen Edward Lawrence Logan Intl	0/8350	7/15/10	ILS Or LOC Rwy 33L, Amdt 3.

[FR Doc. 2010–20395 Filed 8–20–10; 8:45 am]
BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Optional Mail Preparation Standards for Flat-Size Mailpieces in FSS Zones

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service™ is revising the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to provide optional mail preparation standards for flat-size Standard Mail, Periodicals, and Bound Printed Matter mailpieces prepared for delivery within ZIP® Codes served by Flats Sequencing System (FSS) processing.

DATES: Effective January 2, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Hawes at 202–268–8980 or Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: The Postal Service is revising the DMM to provide optional standards for bundle and pallet preparation of flat-size Standard Mail, Periodicals and Bound Printed Matter mailpieces prepared for delivery within the ZIP Codes served by Flats Sequencing System (FSS) processing. FSS is a critical element in the Postal Service's strategic operations plan and will allow the Postal Service to improve delivery efficiency and control costs.

In the 1990s the Postal Service, in an effort to control costs and limit postage prices, adopted technological changes designed to reduce the time carriers spent in the office preparing mail for delivery. The most notable of these changes was the implementation of Delivery Point Sequencing (DPS). Today, the Postal Service is now placing nearly 92 percent of all letter-size mailpieces into delivery sequence. Similar to DPS processing for letters, FSS automates the sequencing of flat-size mailpieces into delivery order, eliminating labor-intensive manual sortation by carriers.

One essential change to the methods that mailers use to prepare flat-size mail involves the modification of bundling standards when mailing to delivery areas with FSS-processing capability. The Postal Service, as it begins to determine the best practices for optimizing FSS implementation and operation, encourages mailers to prepare bundles of flat-size mail to facilitate the efficient loading of this mail into the FSS machines. Efficient induction of mailpieces into FSS requires bundles of flats to be of equal height, in order to facilitate their placement into the standard containers that feed into the FSS induction mechanism. Preparing bundles which can be placed easily into these containers improves efficiency in loading containers and ensures stability and ease of transport of mailer-prepared containers.

The Postal Service developed these optional preparation standards working with members of the mailing industry, representing a wide spectrum of flat mail owners and preparers. The group determined that the preparation of bundles and pallets specifically for FSS processing could lead to greater efficiencies and cost savings for both the USPS® and mailing industry. Industry members agreed that the production of uniform bundle heights could reduce the costs associated with preparing bundles, and that more stable pallet construction would improve mailer transport of the mail to drop shipment locations. In addition, preparing FSS scheme pallets allows for the creation of larger pallets, permitting the mail to move directly to the FSS mail prep area.

The Postal Service is also providing advance notice that FSS-based mail preparation requirements will become mandatory in the future; however we are currently not proposing a timeline for their implementation.

With this revision, mailers will have the option to prepare separate mailings of Standard Mail®, Periodicals, and Bound Printed Matter barcoded flats, including some barcoded nonmachinable Periodicals flats capable of being processed by FSS, into one or more of the following pallet-level separations:

1. A 5-digit FSS-scheme ZIP Code combination (including one or more 5-digit ZIP Codes);
2. FSS facility sort (all 5-digit FSS-scheme ZIP Code combinations processed within the same facility); or
3. A sectional center facility (SCF) with FSS capability, when combined on pallets with flat-size mailpieces not intended for FSS processing.

Mailers choosing to prepare flats for delivery to FSS zones, using this option, will place qualifying mailpieces from all price categories into a separate combined pool for each individual 5-digit FSS-scheme combination. Mailers will then prepare bundles of uniform size from the pieces in the pool. Bundles must be identified as a 5-digit scheme presort with an optional endorsement line (OEL) under 708.7.0. OELs used under this option may be applied to the top piece of each bundle, unless otherwise required to be placed on each piece by other standards. All pieces for each combined mailpiece pool must be prepared in bundles of similar height (3 inches minimum to 6.5 inches maximum), secured according to current bundling standards. Except for one overflow bundle that may be under the minimum height, all bundles within each mailpiece pool must be of uniform size. Though we will allow overflow bundles, we encourage "leveling" (adjusting bundle heights within a presort destination to avoid overflow bundles) of the bundles within each mailpiece pool. The counter-stacking (rotating groups of mailpieces within a bundle 180 degrees from the preceding and succeeding group) of mailpieces within bundles is not being addressed as a part of these optional standards, and mailers may continue this practice in accordance with current standards. In the future, the Postal Service may require that mailpieces not be counter-stacked within bundles when being prepared for FSS processing, but no decision on this potential requirement has been made.

Bundles must be placed on pallets to form layers of consistent thickness; and bundles of nonuniform thickness must be counter-stacked on pallets in accordance with current standards. Pallets must be prepared and labeled as described in DMM 705.8.0, with a pallet placard bearing an Intelligent Mail container barcode as described in 708.6.6.0.

Mailpieces that meet the current eligibility standards for basic and high density carrier route prices will continue to be eligible for these prices when prepared in accordance with the FSS optional preparation standards. Saturation price Standard Mail and Periodicals carrier route flats are not eligible for preparation under this option. The sequencing of mailpieces within carrier route bundles is not required or recommended when

preparing FSS bundles. All other mailpieces will be eligible for the applicable 5-digit automation or non-automation price.

To improve FSS processing, the Postal Service recommends that mailpieces be randomized within each bundle (*i.e.* within bundles, randomly arrange pieces regardless of price category) comprising each 5-digit FSS scheme as defined in labeling list L006.

The 5-digit Outside-County bundle charge will be assessed on bundles of Outside-County Periodicals prepared in accordance with these standards, even though mailpieces being claimed at the carrier route piece price may be properly placed within these bundles. FSS 5-digit scheme pallets will be assessed the Outside-County container charge applicable to the 3-digit level pallet, and FSS facility sort level pallets will be charged a container price applicable to the SCF pallet.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633 and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

***Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM)**

* * * * *

300 Commercial Flats

* * * * *

340 Standard Mail

343 Prices and Eligibility

* * * * *

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Flats

6.1 General Enhanced Carrier Route Standards

* * * * *

6.1.2 Basic Eligibility Standards

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route Standard Mail mailing must:

* * * * *

[Revise item c of 6.1.2 to add reference to optional bundling standards as follows:]

c. Be sorted to carrier routes, marked, and documented under 345.6.0, *Preparing Enhanced Carrier Route Flats,* or 705.8.0, *Preparing Pallets;* or for barcoded flats, prepared under 705.14.0, *Combining Bundles of Flats on Pallets Within FSS Zones.*

* * * * *

7.0 Additional Eligibility Standards for Automation Standard Mail Flats

7.1 Basic Eligibility Standards for Automation Standard Mail

All pieces in a Regular Standard Mail or Nonprofit Standard Mail automation mailing must:

* * * * *

[Revise item f of 7.1 to add reference to optional bundling standards as follows:]

f. Be marked, sorted and documented as specified in 345.7.0, and 705.8.0 through 705.13.0; or prepared under 705.14.0, *Combining Bundles of Flats on Pallets Within FSS Zones.*

* * * * *

360 Bound Printed Matter

363 Prices and Eligibility

* * * * *

5.0 Additional Eligibility Standards for Presorted and Carrier Route Bound Printed Matter Flats

* * * * *

5.2 Additional Standards for Carrier Route Bound Printed Matter

In addition to the basic standards in *2.0, Basic Eligibility Standards for Bound Printed Matter,* and *3.2, Attachments or Enclosures of Periodicals Sample Copies,* all pieces in a Bound Printed Matter carrier route price mailing must:

* * * * *

[Revise item b of 5.2 to add reference to optional bundling standards as follows:]

b. Meet the preparation standards in 365.6.0, *Preparing Carrier Route Flats;* 705.8.0, *Preparing Pallets,* or for barcoded flats, prepared under 705.14.0, *Combining Bundles of Flats on Pallets Within FSS Zones.*

* * * * *

6.0 Additional Eligibility Standards for Barcoded Bound Printed Matter Flats

6.1 Basic Eligibility Standards for Barcoded Bound Printed Matter

[Revise 6.1 to add reference to optional bundling standards by inserting a new, third sentence as follows:]

* * * Pieces may also be optionally prepared under 705.14.0, *Combining Bundles of Flats on Pallets Within FSS Zones.* * * *

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

[Renumber current 705.14 through 705.22 as the new 705.15 through 705.23 and add a new 705.14 as follows:]

14.0 Combining Bundles of Flats on Pallets Within FSS Zones

14.1 General

Flat-size automation and carrier route mailpieces, including barcoded nonmachinable Periodicals pieces, may be optionally consolidated and prepared on pallets for delivery within individual 5-digit Flats Sequencing Systems (FSS) scheme ZIP Code combinations; multiple 5-digit FSS scheme ZIP Code combinations within the same facility; or to a sectional center facility (SCF) with FSS processing, when combined with flat-size mailpieces not intended for FSS processing. Mailers using this option will place qualifying mailpieces from all price categories into a separate combined pool for each individual 5-digit FSS-scheme combination. Mailers will then prepare bundles of uniform size from the pieces in the pool. Mailpieces that meet the eligibility standards for 5-digit automation prices, the Bound Printed Matter barcode discount, or basic and high density carrier route prices will continue to be eligible for these prices when prepared in accordance with the FSS optional preparation standards. Saturation price Standard Mail and Periodicals carrier route flats are not eligible for preparation under this option. Mailpieces and bundles must also be prepared as follows:

a. Bundles for all FSS sort plans must be identified as a 5-digit scheme presort through the use of an optional endorsement line under 708.7.0.

b. All pieces placed into an FSS pool must be barcoded. Automation and carrier route pieces must bear an

accurate delivery point Intelligent Mail barcode or POSTNET barcode including a fully populated routing code field (11 digits).

c. Nonautomation pieces must be barcoded to the finest extent possible.

d. All pieces for each combined mailpiece pool must be prepared in bundles with a 3-inches minimum and a 6.5-inches maximum height.

e. It is recommended that the mailpieces within each bundle be randomized within the 5-digit FSS-scheme ZIP Code combinations or FSS sort plan schemes as defined by L006 (*i.e.* within bundles, randomly arrange pieces regardless of price category). Any piece prepared for a specific 5-digit scheme ZIP Code combination may be placed in the bundles of flats of uniform height.

f. "Leveling" (adjusting bundle heights within a presort destination to avoid overflow bundles) of the bundles within each mailpiece pool is encouraged.

g. Except for one overflow bundle that may be under the minimum size, all bundles within each mailpiece pool must be of uniform size.

h. Bundles must be placed on pallets to form layers of consistent thickness; and bundles of uneven thickness must be counter-stacked on pallets in accordance with 8.5.8.

i. Pallets must be prepared under 8.0 and labeled under 8.6.0, with a pallet placard bearing an Intelligent Mail container barcode as described in 708.6.6.0.

14.2 Periodicals

14.2.1 Basic Standards

Barcoded machinable Periodicals flats meeting the standards in 707.25 and 301.3.0; barcoded nonmachinable Periodicals flats, prepared under 707.26.0 (up to 1 inch in thickness); and carrier route Periodicals flats, prepared under 707.23.0; may be combined in bundles and placed on pallets for delivery to ZIP Codes having Flats Sequencing System (FSS) processing capability, as shown in L006. Periodicals prepared under this option are subject to the following:

a. Eligibility for pricing purposes is based on standards in 707.11.0 through 14.0, except that the 5-digit Outside-County bundle charge will be assessed to bundles of Outside-County Periodicals prepared in accordance with these standards, including those containing mailpieces being claimed at the carrier route piece price.

b. FSS 5-digit scheme pallets will be assessed the Outside-County container charge applicable to the 3-digit level pallet, and the FSS facility sort level pallet will be charged a container price applicable to the SCF pallet.

c. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for 5-digit (scheme) or carrier route prices in accordance with 707.13.0, 14.0 and 25.0.

d. Mailers may combine all 5-digit, carrier route and 5-digit scheme eligible flat-size mailpieces, into a combined mailpiece pool for each FSS 5-digit scheme combination according to L006.

e. Each bundle must be identified with a "SCH 5-DIGIT FSS" optional endorsement line in accordance with Exhibit 708.7.1.1, OEL Formats.

f. All pooled Periodicals mailpieces prepared on pallets to a single presort destination must be prepared in uniform size bundles, between 3 inches and 6.5 inches in height and secured in accordance with 19.4, except that one overflow bundle per mailpiece pool may be under the minimum size.

14.2.2 Pallet Preparation and Labeling

Preparation sequence and labeling:

a. *FSS sort plan, required,* permitted only for FSS bundles prepared for a single FSS sort plan as shown in L006. Pallet must contain only bundles of pooled barcoded 5-digit (scheme) and barcoded carrier route pieces for a single FSS sort plan. Labeling:

1. *Line 1:* L006, column B.

2. *Line 2:* "PER" or "NEWS," as applicable; followed by "FLTS;" followed by "BARCODED" (or "BC"); followed by "FSS SCHEME" (or "FSS SCH").

b. *FSS facility sort, required,* permitted only for FSS bundles prepared for the FSS sort plans processed within the same SCF as shown in L006. Pallet must contain only bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces for a facility's FSS sort plans. Labeling:

1. *Line 1:* "MXD" followed by information in L006, column C.

2. *Line 2:* "PER" or "NEWS," as applicable; followed by "FLTS;" followed by "5D"; followed by "BARCODED" (or "BC"); followed by "FSS SCHEME" (or "FSS SCH").

c. *SCF/FSS, optional,* permitted for FSS and non-FSS bundles processed within the service area of the SCF. Pallet may contain bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces in FSS and non-FSS bundles prepared under 8.0. Labeling:

1. *Line 1:* "MXD" followed by city, state, and ZIP Code information for SCF serving the FSS 5-digit scheme ZIP Code as shown in L005, column B.

2. *Line 2:* "PER" or "NEWS," as applicable; followed by "FLTS;" followed by "SCF"; followed by "BARCODED" (or "BC"); followed by "FSS/NONFSS."

14.3 Standard Mail

14.3.1 Basic Standards

Standard Mail automation flats and Standard Mail barcoded carrier route flats, meeting the physical standards for automation flats under 301.3.0 may be combined in bundles and placed on pallets for delivery to ZIP Codes having Flats Sequencing System (FSS) processing capability, as shown in L006. Standard Mail flats are subject to the following:

a. Price eligibility is based on standards in 343.0.

b. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for 5-digit (scheme) or carrier route prices in accordance with 343.0.

c. Mailers may combine all 5-digit, carrier route and 5-digit scheme eligible flat-size mailpieces into a combined mailpiece pool for each FSS 5-digit scheme combination according to L006.

d. Each bundle must be identified with a "SCH 5-DIGIT FSS" optional endorsement line in accordance with Exhibit 708.7.1.1, OEL Formats.

e. All pooled mailpieces prepared to a single palletized presort destination must be prepared in uniform size bundles, between 3 inches and 6.5 inches in height and secured in accordance with 345.2.5, except that one overflow bundle per mailpiece pool may be under the minimum size.

14.3.2 Pallet Preparation and Labeling

Preparation sequence and labeling:

a. *FSS sort plan, required,* permitted only for FSS bundles prepared for a single FSS sort plan as shown in L006. Pallet must contain only bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces for a single FSS sort plan. Labeling:

1. *Line 1:* L006, column B.

2. *Line 2:* "STD" followed by "FLTS;" followed by "5D"; followed by "BARCODED" (or "BC"); followed by "FSS SCHEME" (or "FSS SCH").

b. *FSS facility sort, required,* permitted only for FSS bundles prepared for the FSS sort plans processed within the same SCF as shown in L006. Pallet must contain only bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces for a facility's FSS sort plans. Labeling:

1. *Line 1:* "MXD" followed by information in L006, column C.

2. *Line 2:* "STD" followed by "FLTS;" followed by "5D"; followed by "BARCODED" (or "BC"); followed by "FSS SCHEME" (or "FSS SCH").

c. *SCF/FSS, optional,* permitted for FSS and non-FSS bundles processed within the service area of the SCF. Pallet may contain bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces in FSS and non-FSS bundles prepared under 8.0. Labeling:

1. *Line 1:* "MXD" followed by city, state, and ZIP Code information for SCF serving the FSS 5-digit scheme ZIP Code as shown in L005, column B.

2. *Line 2:* "STD" followed by "FLTS;" followed by "SCF"; followed by "BARCODED" (or "BC"); followed by "FSS/NONFSS."

14.4 Bound Printed Matter

14.4.1 Basic Standards

Presorted and carrier route Bound Printed Matter flats bearing an accurate barcode meeting the eligibility standards in 363.6.0 may be combined in bundles and placed on pallets for delivery to ZIP Codes having Flat Sequencing System (FSS) processing capability, as shown in L006. Bound Printed Matter flats are subject to the following:

a. Price eligibility for pricing purposes is based on standards in 363.0.

b. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for 5-digit (scheme) or carrier route prices in accordance with 363.0.

c. Mailers may combine all 5-digit, carrier route and 5-digit scheme eligible flat-size mailpieces into a combined mailpiece pool for each FSS 5-digit scheme combination according to L006.

d. Each bundle must be identified with a "SCH 5-DIGIT FSS" optional endorsement line in accordance with Exhibit 708.7.1.1, *OEL Formats.*

e. All pooled mailpieces prepared to a single palletized presort destination must be prepared in uniform size bundles, between 3 inches and 6.5 inches in height and secured in accordance with 365.2.5, except that one overflow bundle per mailpiece pool may be under the minimum size.

14.4.2 Pallet Preparation and Labeling

Preparation sequence and labeling:

a. *FSS sort plan, required,* permitted only for FSS bundles prepared for a single FSS sort plan as shown in L006. Pallet must contain only bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces for a single FSS sort plan. Labeling:

1. *Line 1:* L006, (sort plan name) column B.

2. *Line 2:* "PSVC FLTS;" followed by "5D"; followed by "BARCODED" (or "BC"); followed by "FSS SCHEME" (or "FSS SCH").

b. *FSS facility sort, required,* permitted only for FSS bundles prepared for the FSS sort plans processed within the same SCF as shown in L006. Pallet must contain only bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces for a facility's FSS sort plans. Labeling:

1. *Line 1:* "MXD" followed by information in L006, column C.

2. *Line 2:* "PSVC FLTS;" followed by "5D"; followed by "BARCODED" (or "BC"); followed by "FSS SCHEME" (or "FSS SCH")

c. *SCF/FSS, optional,* permitted for FSS and non-FSS bundles processed within the service area of the SCF. Pallet may contain bundles of barcoded 5-digit (scheme) and barcoded carrier route pieces in FSS and non-FSS bundles prepared under 8.0. Labeling:

1. *Line 1:* "MXD" followed by city, state, and ZIP Code information for SCF serving the FSS 5-digit scheme ZIP Code as shown in L005, column B.

2. *Line 2:* "PSVC FLTS;" followed by "FLTS;" followed by "SCF"; followed by "BARCODED" (or "BC"); followed by "FSS/NONFSS."

* * * * *

707 Periodicals

* * * * *

13.0 Carrier Route Eligibility

* * * * *

13.2 Sorting

13.2.1 Basic Standards

Preparation to qualify eligible pieces for carrier route prices is optional and need not be performed for all carrier routes in a 5-digit area. Carrier route prices apply to copies that are prepared in carrier route bundles of six or more addressed pieces each, subject to these standards:

* * * * *

[Revise item b of 13.2.1 to add reference to optional bundling standards by adding a new item b4 as follows:]

4. Bundles prepared on pallets under 705.14.0, *Combining Bundles of Flats on Pallets Within FSS Zones.*

* * * * *

14.0 Barcoded (Automation) Eligibility

14.1 Basic Standards

14.1.1 General

All pieces in a Periodicals barcoded (automation) mailing must:

* * * * *

[Revise item d of 14.1 to add reference to optional bundling standards as follows:]

d. Be marked, sorted, and documented as specified in 705.8.0 (if palletized); or 24.0 (for letters) or 25.0 (for flats) or; for nonletter-size mail, 705.9.0, 705.10.0, 705.12.0, or 705.13.0; or for nonletter-size mail, bundles prepared on pallets under 705.14.0, *Combining Bundles of Flats on Pallets Within FSS Zones.*

* * * * *

708 Technical Specifications

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7.0 Optional Endorsement Lines (OELs)

7.1 OEL Use

7.1.1 Basic Standards

* * * * *

Exhibit 7.1.1 OEL Formats

Sortation Level OEL Example

* * * * *

[Revise Exhibit 7.1.1 to add a new item 13 (after item 12, "5-Digit Scheme (automation compatible flats")) to describe additional OEL human-readable text for use with FSS preparation mailpieces as follows:]

5-Digit Scheme * * * * * * * * * * *
* * * * * * SCH 5-DIGIT 12345 FSS
(Optional FSS-compatible flats preparation)

* * * * *

We will publish an amendment to 39 CFR 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–20055 Filed 8–20–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2009–0549; SW–FRL–9191–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by Tokusen USA, Inc. (called Tokusen hereinafter) to exclude (or delist) a wastewater treatment plant (WWTP) sludge filter cake (called sludge hereinafter) generated by Tokusen in Conway, AR from the list of hazardous wastes. The final rule

responds to the petition submitted by Tokusen, to delist the WWTP sludge.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petition waste is not hazardous waste. This exclusion applies to 2,000 cubic yards per year of the WWTP sludge with Hazardous Waste Number: F006. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D landfill.

DATES: *Effective Date:* August 23, 2010.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act Review room on the 7th floor from 8 a.m. to 4 p.m. Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is EPA–R06–RCRA–2009–0549. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Youngmoo Kim, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD–C), Dallas, Texas 75202, at (214) 665–6788, or *kim.youngmoo@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What action is EPA finalizing?

After evaluating the petition, on March 31, 2010, EPA proposed to exclude the WWTP sludge from the list of hazardous wastes under 40 CFR 261.31 and 261.32 (*see* 70 FR 41358). EPA is finalizing the decision to grant Tokusen's delisting petition to have its WWTP sludge managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.

B. Why is EPA approving this action?

Tokusen's petition requests an exclusion from the F006 hazardous waste listing pursuant to 40 CFR 260.20 and 260.22. Tokusen does not believe that the petitioned waste meets the criteria for which EPA listed it. Tokusen also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist the waste from Tokusen is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the facility in Conway, Arkansas.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

D. How will Tokusen manage the waste, if it is delisted?

If the sludge is delisted, the WWTP sludge from Tokusen will be disposed at a RCRA Subtitle D landfill: The Waste Management Industrial Landfill, North Little Rock, Arkansas.

E. When is the final delisting exclusion effective?

This rule is effective August 23, 2010. The Hazardous and Solid Waste Amendments of 1985 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allows rules to become effective less than a six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How would this action affect states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929.

These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA programs)) may regulate a petitioner's waste, EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If Tokusen transports the petitioned waste to or manages the waste in any state with delisting authorization, Tokusen must obtain delisting authorization from that state before it can manage the waste as non-hazardous in the state.

II. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to EPA, or another agency with jurisdiction, to exclude or delist from the RCRA list of hazardous waste, certain wastes the generator believes should not be considered hazardous under RCRA.

B. What regulations allow facilities to delist a waste?

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What does it require of a petitioner?

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under 40 CFR 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has "delisted" the waste.

D. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in 40 CFR 260.22(a) and § 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. *See* §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. *See* 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What waste did Tokusen petition EPA to delist?

On March 25, 2009, Tokusen petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, WWTP sludge (F006) generated from its facility located in Conway, Arkansas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, Tokusen requested that EPA grant a standard exclusion for 2,000 cubic yards per year of the WWTP sludge.

B. Who is Tokusen and what process does it use to generate the petitioned waste?

The Tokusen USA, Inc. facility produces high-carbon steel tire cord for use in radial tire manufacturing. The steel cord is produced from steel rod which has been reduced in size and electroplated with copper and zinc to produce a brass coating. The facility generates F006 filter cake by the dewatering of wastewater sludge generated at the on-site wastewater treatment plants. This waste is stored on-site less than 90 days and is then transported from the site to the RCRA Subtitle C facility, Chemical Waste Management in Sulphur, LA 70556.

C. How did Tokusen sample and analyze the data in this petition?

To support its petition, Tokusen submitted:

(1) Historical information on waste generation and management practices;

(2) Analytical results from four samples for total concentrations of compounds of concern (COCs);

(3) Analytical results from four samples for Toxicity Characteristic Leaching Procedure (TCLP) extract values of COCs; and

(4) Multiple pH testing for the petitioned waste.

D. What were the results of Tokusen's analyses?

EPA believes that the descriptions of the Tokusen analytical characterization provide a reasonable basis to grant Tokusen's petition for an exclusion of the WWTP sludge. EPA believes the data submitted in support of the petition show the WWTP sludge is non-hazardous. Analytical data for the WWTP sludge samples included in the March 2009 petition were used in the DRAS to develop delisting levels.

EPA has reviewed the sampling procedures used by Tokusen and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the WWTP sludge. In addition, the data submitted in support of the petition show that constituents in Tokusen's waste are presently below health-based levels used in the delisting decision-making. EPA believes that Tokusen has successfully demonstrated that the WWTP sludge is non-hazardous.

E. How did EPA evaluate the risk of delisting this waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (i.e., groundwater, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in a landfill is the most reasonable, worst-case disposal scenario for Tokusen's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000), 65 FR 75637 (December 4, 2000), and 73 FR 28768 (May 19, 2008) to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of Tokusen's petitioned waste on human health and

the environment. A copy of this software can be found on the World Wide Web at *http://www.epa.gov/reg5rcra/wptdiv/hazardous/delisting/dras-software.html.* In assessing potential risks to groundwater, EPA used the maximum waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 1.0). The DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and EPA health-based numbers. Using the maximum compliance-point concentrations and EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.,* volatilization from the landfill). As in the above groundwater analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels").

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit on which the fate and transport model evaluates.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of the DRAS and TCLP Analyses results found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products in Tokusen waste.

F. What did EPA conclude about Tokusen's analysis?

EPA concluded, after reviewing Tokusen's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in the waste. In addition, on the basis of explanations and analytical data provided by Tokusen, pursuant to § 260.22, EPA concludes that the petitioned waste do not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity. *See* §§ 261.21, 261.22 and 261.23, respectively.

G. What other factors did EPA consider in its evaluation?

During the evaluation of Tokusen's petition, EPA also considered the potential impact of the petitioned waste via non-groundwater routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Tokusen's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Tokusen's waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Tokusen's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Tokusen's WWTP waste.

H. What is EPA's evaluation of this delisting petition?

The descriptions of Tokusen's hazardous waste process and analytical characterization provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the leachable concentrations. EPA believes that Tokusen's waste, F006 from copper and zinc electroplating process to produce a brass coating will not impose any threat to human health and the environment.

Thus, EPA believes Tokusen should be granted an exclusion for the WWTP sludge. EPA believes the data submitted in support of the petition show Tokusen's WWTP sludge is non-hazardous. The data submitted in support of the petition show that constituents in Tokusen's waste are presently below the compliance-point concentrations used in the delisting decision and would not pose a substantial hazard to human health and the environment. EPA believes that Tokusen has successfully demonstrated that the WWTP sludge is non-hazardous.

EPA therefore, proposes to grant an exclusion to Tokusen in Conway, Arkansas, for the WWTP sludge described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the WWTP sludge.

EPA will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

The appropriate waste code for this waste is F006. The LDR treatment standard for F006 is found in 40 CFR 268.40.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

No comments were received on the Proposed Rule during the comment period.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995

(44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have a reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule.

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties, 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability. Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The Agency's risk assessment did not identify risks from management of this material in a Subtitle D landfill. Therefore, EPA does not believe that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 11, 2010.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division, Region 6.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22.

* * * * *

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Tokusen, USA Inc	Conway, AR	Wastewater Treatment Sludge (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 2,000 cubic yards per calendar year after August 23, 2010 will be disposed in Subtitle D landfill. For the exclusion to be valid, Tokusen must implement a verification testing program that meets the following paragraphs: (1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the following levels (mg/l for TCLP). (A) Inorganic Constituents; Antimony-0.4; Arsenic-1.59; Barium-100; Chromium-5.0; Cobalt-0.8; Copper-91.3; Lead-2.32; Nickel-50.5; Selenium-1.0; Zinc-748. (B) Organic Constituents: Acetone-1950. (2) *Waste Management:*

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Tokusen must manage as hazardous all WWTP sludge generated, until it has completed initial verification testing described in paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied and approval is received by EPA. (B) Levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) are non-hazardous. Tokusen can manage and dispose of the non-hazardous WWTP sludge according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the Delisting Levels set in paragraph (1), Tokusen can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, Tokusen must, from that point forward, treat all the waste covered by this exclusion as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). Tokusen must manage and dispose of the waste generated under Subtitle C of RCRA when it becomes aware of any exceedance. (D) Upon completion of the verification testing described in paragraph 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of paragraph (1), Tokusen may proceed to manage its WWTP sludge as non-hazardous waste. If subsequent verification testing indicates an exceedance of the Delisting Levels in paragraph (1), Tokusen must manage the WWTP sludge as a hazardous waste after it has received approval from EPA as described in paragraph (2)(C). (3) *Verification Testing Requirements:* Tokusen must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 8260B, 1311/8260B, 8270C, 6010B, 7470, 9034A, ASTMD–4982B, ASTMD–5049, E413.2. Methods must meet Performance Based Measurement System Criteria in which The Data Quality Objectives are to demonstrate that representative samples of sludge meet the delisting levels in paragraph (1). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Tokusen may replace the testing required in paragraph (3)(A) with the testing required in paragraph (3)(B). Tokusen must continue to test as specified in paragraph (3)(A) until and unless notified by EPA in writing that testing in paragraph (3)(A) may be replaced by paragraph (3)(B). (A) *Initial Verification Testing:* After EPA grants the final exclusion, Tokusen must do the following: (i) The first sampling event for eight (8) samples will be performed within thirty (30) days of operation after this exclusion becomes final. (ii) The samples are to be analyzed and compared against the Delisting Levels in paragraph (1). (iii) Within sixty (60) days after this exclusion becomes final, Tokusen will report initial verification analytical test data for the WWTP sludge, including analytical quality control information. Tokusen must request in writing that EPA allows Tokusen to substitute the Testing conditions in (3)(B) for (3)(A). (B) *Subsequent Verification Testing:* Following written notification by EPA, Tokusen may substitute the testing conditions in (3)(B) for (3)(A). Tokusen must continue to monitor operating conditions, and analyze two representative samples of the wastewater treatment sludge for each quarter of operation during the first year of waste generation. If levels of constituents measured in the samples of the WWTP sludge do not exceed the levels set forth in paragraph (1) in two consecutive quarters, Tokusen can manage and dispose of the WWTP sludge according to all applicable solid waste regulations. After the first year of sampling events, one (1) verification sampling test can be performed on two (2) annual samples of the waste treatment sludge. The results are to be compared to the Delisting Levels in paragraph (1). (C) *Termination of Testing:* (i) After the first year of quarterly testings, if the Delisting Levels in paragraph (1) are met, Tokusen may then request that EPA does not require a quarterly testing. (ii) Following termination of the quarterly testing, Tokusen must conduct one (1) sampling event on two (2) representative samples for all constituents listed in paragraph (1) annually. (4) *Changes in Operating Conditions:*

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		If Tokusen significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. (5) *Data Submittals:* Tokusen must submit the information described below. If Tokusen fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to re-open the exclusion as described in paragraph (6). Tokusen must: (A) Submit the data obtained through paragraph (3) to the Section Chief, Corrective Action and Waste Minimization Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified. (B) Compile records of operating conditions and analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the state of Arkansas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I can not personally verify its (their) truth and accuracy I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Re-Opener:* (A) If, any time after disposal of the delisted waste, Tokusen possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in paragraph (1), Tokusen must report the data in writing to the Division Director within 10 days of first possessing or being made aware of that data. (C) If Tokusen fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information does require action, EPA's Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action by EPA is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if) no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA's actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) *Notification Requirements:*

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Tokusen must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update one-time written notification, if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0456; SW–FRL–9191–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting a petition submitted by Occidental Chemical Corporation (OxyChem) to exclude (or delist) its wastewater treatment biosludge generated by its Ingleside, Texas facility from the lists of hazardous wastes. This final rule responds to the petition submitted by OxyChem to delist K019, K020, F025, F001, F003, and F005 waste resulting from the treatment of wastewaters from the manufacturing processes at its facility.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded that the petitioned waste is not hazardous waste. This exclusion applies to 7,500 cubic yards per year of the K019, K020, F025, F001, F003, and F005 waste. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.

DATES: *Effective Date:* August 23, 2010.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is EPA–R06–RCRA–2009–0108. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Wendy Jacques, Environmental Protection Agency Region 6, 1445 Ross Avenue, (6PD–F), Dallas, Texas 75202, at (214) 665–7395, or *jacques.wendy@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What action is EPA finalizing?

After evaluating the petition, EPA proposed, on July 9, 2009, to exclude the wastewater treatment biosludge from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (*see* 73 FR 54760). EPA is finalizing the decision to grant OxyChem's delisting petition to have its wastewater treatment biosludge managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.

B. Why is EPA approving this action?

OxyChem's petition requests a delisting from K019, K020, F025, F001, F003, and F005 wastes listed under 40 CFR 260.20 and 260.22. OxyChem does not believe that the petitioned wastes meet the criteria for which EPA listed it. OxyChem also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste as originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is

acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist the waste water treatment biosludge from OxyChem's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Ingleside, Texas facility.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

D. How will OxyChem manage the waste if it is delisted?

The wastewater treatment biosludge from OxyChem will be disposed of in a RCRA Subtitle D landfill.

E. When is the final delisting exclusion effective?

This rule is effective August 23, 2010. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1) allows rules to become effective less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How does this final rule affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude States which have received authorization from EPA to make their own delisting decisions.

EPA allows States to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Oklahoma, Georgia, and Illinois) to administer a RCRA delisting program in place of the Federal program; that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If OxyChem transports the petitioned waste to or manages the waste in any State with delisting authorization, OxyChem must obtain delisting authorization from that State before it can manage the waste as non-hazardous in the State.

II. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to EPA, or another agency with jurisdiction, to exclude or delist from the RCRA list of hazardous waste, certain wastes the generator believes should not be considered hazardous under RCRA.

B. What regulations allow facilities to delist a waste?

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. Based on the complete application, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. The generator must also supply information to demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21–§ 261.24.

III. EPA's Evaluation of the Waste Information and Data

A. What waste did OxyChem petition EPA to delist?

On September 20, 2007, OxyChem petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, wastewater treatment biosludge (K019, K020, F025, F001, F003, and F005) generated from its facility located in Ingleside, Texas. The waste falls under the classification of listed waste pursuant to § 261.31.

B. How much waste did OxyChem propose to delist?

Specifically, in its petition, OxyChem requested that EPA grant a standard exclusion for 7,500 cubic yards per year of biosludge resulting from the treatment of wastewaters from the manufacturing processes at its facility.

C. How did OxyChem sample and analyze the waste data in this petition?

To support its petition, OxyChem submitted:

- Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semi volatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for four wastewater treatment biosludge samples;
- Analytical results from multiple pH leaching of metals; and
- Descriptions of the waste water treatment process.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

The EPA received a Freedom of Information request for OxyChem's original delisting petition and all supporting documents from Arnold & Porter LLP. The EPA submitted OxyChem's original delisting petition and all supporting documents, excluding all confidential material, to Arnold & Porter LLP. No specific comments were received.

EPA discovered an error in the proposed exclusion for the total concentration limit for 2,3,7,8–TCDD in the proposed rule. The calculated value for the delisting limit for 2,3,7,8–TCDD should be 5.23E–04 mg/kg instead of 4.30E–05 mg/kg as was proposed. This

change does not materially affect the proposal.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism", (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this final rule does not have Tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform", (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

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

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: August 11, 2010.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division, Region 6.

■ For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Tables 1 and 2 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
Oxychem	Ingleside, TX	Wastewater Treatment Biosludge (EPA Hazardous Waste Number K019, K020, F025, F001, F003, and F005) generated at a maximum rate of 7,500 cubic yards per calendar year after August 23, 2010. For the exclusion to be valid, OxyChem must implement a verification testing program that meets the following Paragraphs: (1)(A) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Wastewater treatment biosludge Leachable Concentrations (mg/l): Antimony—0.111; Acetone—533; Arsenic—0.178; Barium—36.9; Bis(2-ethylhexyl)phthalate—6.15; Chromium—2.32; Copper—26.5; Ethylbenzene—11.1; Methylene Chloride—0.0809; Naphthalene—0.0355; Nickel—13.8; Phenanthrene—2.72; Toluene—15.5; Trichloroethane—11900; Trichloroethylene—0.0794; Vanadium—1.00; Zinc—202. (B) Total Concentration Limits in mg/Kg: Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8 Equivalent—5.23 E–04 (2) Waste Holding and Handling:

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for wastewater treatment biosludge has occurred for four consecutive weekly sampling events. (B) If constituent levels in any annual sample and retest sample taken by OxyChem exceed any of the delisting levels set in paragraph (1) for the wastewater treatment biosludge, OxyChem must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose the wastewater treatment biosludge as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, OxyChem must perform analytical testing by sampling and analyzing the wastewater treatment biosludge as follows: (A) Initial Verification Testing: (i) Collect four representative composite samples of the wastewater treatment biosludge at weekly intervals after EPA grants the final exclusion. The first composite sample may be taken at any time after EPA grants the final approval. Sampling must be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) indicates that the wastewater treatment biosludge must continue to be disposed as hazardous waste in accordance with the applicable hazardous waste requirements until such time that four consecutive weekly samples indicate compliance with delisting levels listed in paragraph (1). (iii) Within sixty (60) days after taking its last weekly sample, OxyChem will report its analytical test data to EPA. If levels of constituents measured in the samples of the wastewater treatment biosludge do not exceed the levels set forth in paragraph (1) of this exclusion for four consecutive weeks, OxyChem can manage and dispose the non-hazardous wastewater treatment biosludge according to all applicable solid waste regulations. (B) Annual Testing: (i) If OxyChem completes the weekly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), OxyChem must begin annual testing as follows: OxyChem must test a representative composite sample of the wastewater treatment biosludge for all constituents listed in paragraph (1) at least once per calendar year. If any measured constituent concentration exceeds the delisting levels set forth in paragraph (1), OxyChem must collect an additional representative composite sample within 10 days of being made aware of the exceedence and test it expeditiously for the constituent(s) which exceeded delisting levels in the original annual sample. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B,1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the OxyChem wastewater treatment biosludge are representative for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report should include the total amount of delisted waste in cubic yards disposed during the calendar year. (4) Changes in Operating Conditions: If OxyChem significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. OxyChem must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) Data Submittals: OxyChem must submit the information described below. If OxyChem fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). OxyChem must: (A) Submit the data obtained through paragraph 3 to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD–ROM or comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion." (6) Reopener (A) If, anytime after disposal of the delisted waste OxyChem possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If either the annual testing (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, OxyChem must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If OxyChem fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from receipt of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) *Notification Requirements:* OxyChem must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) Update one-time written notification, if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	* *	* * * * *
Oxychem		Wastewater Treatment Biosludge (EPA Hazardous Waste Number K019, K020, F025, F001, F003, and F005) generated at a maximum rate of 7,500 cubic yards per calendar year after August 23, 2010. Oxychem must implement the testing program in Table 1. Wastes Excluded from Non-Specific Sources for the petition to be valid.

* * * * *

[FR Doc. 2010–20848 Filed 8–20–10; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907301206–0032–02]

RIN 0648–XX82

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Directed Butterfish Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the directed fishery for butterfish in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, August 24, 2010. Vessels issued a Federal permit to harvest butterfish may not retain or land more than 250 lb (0.11–mt) of butterfish per trip for the remainder of the year (through December 31, 2010). This action is necessary to prevent the fishery from exceeding its domestic annual harvest (DAH) of 485 mt, and to allow for effective management of this stock.

DATES: Effective 0001 hours, August 24, 2010, through 2400 hours, December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, 978 675–2179, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the butterfish fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). The procedures for setting the annual initial specifications are described in § 648.21.

The 2010 specification of DAH for butterfish was set at 485 mt (75 FR 5537, February 3, 2010).

Section 648.22 requires NMFS to close the directed butterfish fishery in the EEZ when 80 percent of the total annual DAH has been harvested. If 80 percent of the butterfish DAH is projected to be landed prior to October 1, a 250–lb (0.11–mt) incidental butterfish possession limit is put in effect for the remainder of the year, and if 80 percent of the butterfish DAH is projected to be landed on or after October 1, a 600–lb (0.27–mt) incidental butterfish possession limit is put in effect for the remainder of the year. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of butterfish permits at least 72 hr before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**.

The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for butterfish in 2010 fishing year will be harvested. Therefore, effective 0001 hours, August 24, 2010, the directed fishery for the butterfish fishery is closed and vessels issued Federal permits for butterfish may not retain or land more than 250 lb (0.11 mt) of butterfish per trip or calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2011, when the 2011 DAH becomes available.

Classification

This action is required by 50 CFR part 648, and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the butterfish fishery until January 1, 2011, under current regulations. The regulations at § 648.21 require such action to ensure that butterfish vessels do not exceed the 2010 TAC. Data indicating the butterfish fleet will have landed at least 80 percent of the 2010 TAC have only recently become available. If implementation of this closure if delayed to solicit prior public comment, the quota for this year will be exceeded, thereby undermining the conservation objectives of the FMP. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30–day delayed effectiveness period for the reasons stated above.

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

Dated: August 17, 2010.

Carrie Selberg,

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

[FR Doc. 2010–20866 Filed 8–18–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 090428799–9802–01]

RIN 0648–BA10

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Inseason Adjustments to Fishery Management Measures

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule makes inseason adjustments to commercial fishery management measures for several groundfish species taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) August 18, 2010. Comments on this final rule must be received no later than 5 p.m., local time on September 22, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–BA10, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* 206–526–6736, Attn: Gretchen Hanshew
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070, Attn: Gretchen Hanshew.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew (Northwest Region, NMFS), 206–526–6147, fax: 206–526–6736, *gretchen.hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the Pacific Fishery Management Council's (the Council or PFMC) Web site at *http://www.pcouncil.org/.*

Background

On December 31, 2008, NMFS published a proposed rule to implement the 2009–2010 specifications and management measures for the Pacific Coast groundfish fishery (73 FR 80516). The final rule to implement the 2009–2010 specifications and management measures for the Pacific Coast Groundfish Fishery was published on March 6, 2009 (74 FR 9874). This final rule was subsequently amended by inseason actions on April 27, 2009 (74 FR 19011), July 6, 2009 (74 FR 31874), October 28, 2009 (74 FR 55468), February 26, 2010 (75 FR 8820), May 4, 2010 (75 FR 23620), July 1, 2010 (75 FR 38030), and July 16, 2010 (75 FR 41386). Additional changes to the 2009–2010 specifications and management measures for petrale sole were made in two final rules: On November 4, 2009 (74 FR 57117), and December 10, 2009 (74 FR 65480). NMFS issued a final rule in response to a duly issued court order on July 8, 2010 (75 FR 39178). These specifications and management measures are at 50 CFR part 660, subpart G.

Limited Entry Non-Whiting Trawl Fishery Management Measures

Changes to the groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its June 11–17, 2010, meeting in Foster City, CA. The Council recommended adjusting the groundfish management measures to respond to updated fishery information and other inseason management needs. These changes include increases to bi-monthly cumulative limits in the commercial fisheries off Washington, Oregon, and California and a change to the lingcod retention regulations for salmon troll fishermen. The increases to cumulative limits are intended to allow additional harvest opportunities for species for which catch estimates through the end of the year are lower than anticipated. The change to the lingcod retention regulations is intended to relieve a restriction for salmon trollers that do not fish inside the groundfish rockfish conservation area (RCA). The increase to chilipepper rockfish trip limits in the limited entry trawl fishery slightly increases the projected impacts to bocaccio, a co-occurring overfished species. However, even with the slight increase in impacts for bocaccio, when combined with the projected impacts from all other fisheries, the 2010 OY for this rebuilding species is not projected to be exceeded.

Estimated mortality of overfished and target species are the result of management measures designed to meet the Pacific Coast Groundfish FMP objective of achieving, to the extent possible, but not exceeding, OYs of target species, while fostering the rebuilding of overfished stocks by remaining within their rebuilding OYs.

Limited Entry Non-Whiting Trawl Fishery

Chilipepper rockfish is an underutilized species, primarily due to fishery management measures that are intended to reduce impacts to co-occurring bocaccio, an overfished species. Recent inseason restrictions to trip limits for sablefish, Dover sole, petrale sole and other flatfish in the limited entry trawl fishery to prevent exceeding the 2010 OY for petrale sole and the limited entry trawl allocation for sablefish have reduced projected impacts to bocaccio in the trawl fishery. Due to the lower than anticipated projected impacts to bocaccio, the Council considered increasing the trip limits for chilipepper rockfish to provide additional harvest opportunities for this underutilized healthy stock. With the recommended chilipepper rockfish trip limit adjustments, projected impacts to overfished bocaccio are anticipated to be 7.5 mt, or 47 percent of the trawl fisheries' initially projected bocaccio impacts of

16.1 mt and projected impacts to chilipepper rockfish are anticipated to be well below the 2010 OY.

Based on the considerations outlined above, the Council recommended and NMFS is implementing the following changes to cumulative limits in the limited entry non-whiting trawl fishery: Increase chilipepper rockfish cumulative limits caught with all trawl gears South of 40°10.00′ N. lat. from "12,000 lb (5,443 kg) per 2 months" to "17,000 lb (7,711 kg) per 2 months" in July-December.

Limited Entry Fixed Gear Sablefish Daily Trip Limits

Catch of sablefish in the limited entry fixed gear daily trip limit (DTL) fishery north of 36° N. lat. is lower than anticipated. Based on the most recent fishery information, if no action is taken and catch remains lower than expected, only 236 mt out of the 321 mt sablefish allocation (73 percent) will be caught through the end of the year. The Council considered modest increases to the bi-monthly cumulative limits in the limited entry fixed gear sablefish DTL fishery north of 36° N. lat. to allow the fishery to attain a larger proportion of its sablefish allocation.

Projected impacts to overfished species in the limited entry fixed gear fishery are calculated assuming the entire sablefish allocation is harvested. Therefore, increases to trip limits to harvest a larger proportion of the sablefish allocation do not result in higher than anticipated impacts to co-occurring overfished groundfish species.

Based on the considerations outlined above, the Council recommended and NMFS is implementing the following changes to cumulative limits in the limited entry fixed gear sablefish DTL fishery North of 36° N. lat.: Increase the sablefish trip limits from "1,750 lb (794 kg) per week, not to exceed 7,000 lb (3,175 kg) per 2 months" to "1,750 lb per week, not to exceed 8,500 lb (3,856 kg) per 2 months" in periods 4 and 5 and from "1,750 lb per week, not to exceed 7,000 lb per 2 months" to "1,750 lb per week, not to exceed 8,000 lb (3,629 kg) per 2 months" in period 6, beginning as soon as possible.

Open Access Fishery

As part of the 2009–2010 Groundfish harvest specifications and management measures, the Council considered a change to the lingcod retention regulations for fishermen in the salmon troll fishery that wish to retain incidentally caught lingcod North of 40°10.00′ N. lat. Prior to 2009, salmon troll fishermen were not allowed to retain any groundfish, except yellowtail rockfish, if they were fishing inside the non-trawl rockfish conservation area (RCA). The Council recommended that salmon troll fishermen be allowed to retain a limited amount of lingcod, even if they were fishing for salmon inside of the non-trawl RCA, beginning in 2009. NMFS implemented language in Table 5 North that changed the lingcod retention regulations for salmon troll fishermen: "Salmon trollers may retain and land up to 1 lingcod per 15 Chinook, plus 1 lingcod up to a trip limit of 10 lingcod, both within and outside of the RCA." At their June 2010 meeting, the Council requested that NMFS revise the lingcod retention allowance language to clarify that if salmon trollers fished entirely outside of the non-trawl RCA on a trip then they were not subject to the lingcod landing ratio of 1:15 with a trip limit of 10 lingcod, but were subject to the lingcod cumulative limit for the open access fishery, which is currently 400 lb (181 kg) per month. The intent of the change to the regulations in 2009 was to allow limited lingcod retention opportunities for salmon trollers fishing for salmon within the groundfish non-trawl RCA, and no changes to regulations that apply to salmon trollers operating outside of the RCA were intended.

At their June 2010 meeting, the Council requested that NMFS revise the lingcod retention regulations for salmon troll fishermen to relieve the restriction of "1 lingcod per 15 Chinook, plus 1 lingcod up to a trip limit of 10 lingcod" for salmon trollers that are operating entirely outside of the groundfish non-trawl RCA.

Based on the considerations outlined above, the Council recommended and NMFS is implementing the following changes to lingcod retention allowances for vessels fishing in the salmon troll fishery and operating outside of the non-trawl RCA North of 40°10.00′ N. lat.: From "Salmon trollers may retain and land up to 1 lingcod per 15 Chinook, plus 1 lingcod up to a trip limit of 10 lingcod, both within and outside of the RCA" to "Salmon trollers may retain and land up to 1 lingcod per 15 Chinook, plus 1 lingcod up to a trip limit of 10 lingcod, on a trip when any fishing occurs within the RCA."

Classification

This rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

These inseason adjustments are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b)(B) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its June 11–17, 2010, meeting in Foster City, CA. The Council recommended that these changes be implemented as quickly as possible. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science to approach, without exceeding, the OYs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon, and California.

These adjustments to management measures must be implemented in a timely manner to allow fishermen an opportunity to harvest higher limits in 2010 for chilipepper, sablefish and lingcod beginning as quickly as possible. Increases are necessary to relieve a restriction by allowing fishermen increased opportunities to harvest available healthy stocks while staying within the OYs for these species. These changes must be implemented in a timely manner, as quickly as possible, so that fishermen are allowed increased opportunities to harvest available healthy stocks and meet the objective of

the Pacific Coast Groundfish FMP to allow fisheries to approach, but not exceed, OYs. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because making this regulatory change quickly allows additional harvest in fisheries that are important to coastal communities.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: August 18, 2010.

Carrie Selberg,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. Table 3 (South), Tables 4 (North) and 4 (South), and Table 5 (North) to part 660, subpart G, are revised to read as follows:

BILLING CODE 3510–22–P

Table 3 (South) to Part 660, Subpart G -- 2010 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 07102010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	South of 40°10' N. lat.	100 fm line[6/] - 150 fm line[6/ 7/]					
All trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA.							
See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
2	**Minor slope rockfish[2/] & Darkblotched rockfish**						
3	40°10' - 38° N. lat.	15,000 lb/ 2 months					
4	South of 38° N. lat.	55,000 lb/ 2 months					
5	**Splitnose**						
6	40°10' - 38° N. lat.	15,000 lb/ 2 months					
7	South of 38° N. lat.	55,000 lb/ 2 months					
8	**DTS complex**						
9	Sablefish	22,000 lb/ 2 months			21,000 lb/ 2 months		
10	Longspine thornyhead	24,000 lb/ 2 months					
11	Shortspine thornyhead	18,000 lb/ 2 months					
12	Dover sole	110,000 lb/ 2 months			100,000 lb/ 2 months		
13	**Flatfish** (except Dover sole)						
14	Other flatfish[3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months
15	Petrale sole	9,500 lb/ 2 months					6,300 lb/ 2 months
16	Arrowtooth flounder	10,000 lb/ 2 months					
17	**Whiting**						
18	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
19	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					

TABLE 3 (South)

Table 3 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
20	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**						
21	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month					
22	large footrope or midwater trawl for Chilipepper	12,000 lb/ 2 months			17,000 lb/ 2 months		
23	large footrope or midwater trawl for Widow & Yelloweye	CLOSED					
24	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month					
25	small footrope trawl for Chilipepper	12,000 lb/ 2 months			17,000 lb/ 2 months		
26	**Bocaccio**						
27	large footrope or midwater trawl	300 lb/ 2 months					
28	small footrope trawl	CLOSED					
29	**Canary rockfish**						
30	large footrope or midwater trawl	CLOSED					
31	small footrope trawl	100 lb/ month		300 lb/ month		100 lb/ month	
32	**Cowcod**	CLOSED					
33	**Bronzespotted rockfish**	CLOSED					
34	**Minor nearshore rockfish & Black rockfish**						
35	large footrope or midwater trawl	CLOSED					
36	small footrope trawl	300 lb/ month					
37	**Lingcod[4/]**						
38	large footrope or midwater trawl	1,200 lb/ 2 months		4,000 lb/ 2 months			
39	small footrope trawl			1,200 lb/ 2 months			
40	**Pacific cod**	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
41	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
42	**Other Fish[5/] & Cabezon**	Not limited					

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
5/ Other fish are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 07102010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	45°03.83' N. lat. - 43°00' N. lat.	30 fm line[6/] - 125 fm line[6/ 7/]					
4	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
5	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
6	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
7	**Pacific ocean perch**	1,800 lb/ 2 months					
8	**Sablefish**	1,750 lb per week, not to exceed 7,000 lb/ 2 months			1,750 lb per week, not to exceed 8,500 lb/ 2 months		1,750 lb per week, not to exceed 8,000 lb/ 2 months
9	**Longspine thornyhead**	10,000 lb/ 2 months					
10	**Shortspine thornyhead**	2,000 lb/ 2 months					
11	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Starry flounder**						
16	**Other flatfish[1/]**						
17	**Whiting**	10,000 lb/ trip					
18	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
19	**Canary rockfish**	CLOSED					
20	**Yelloweye rockfish**	CLOSED					
21	**Minor nearshore rockfish & Black rockfish**						
22	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
23	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish[3/]				
24	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
25	**Pacific cod**	1,000 lb/ 2 months					
26	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
27	**Other fish[5/]**	Not limited					

TABLE 4 (North)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 07102010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	1,750 lb per week, not to exceed 7,000 lb/ 2 months			1,750 lb per week, not to exceed 8,500 lb/ 2 months		1,750 lb per week, not to exceed 8,000 lb/ 2 months
7	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb				3,000 lb per week	
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 4 (South)

Table 4 (South). Continued

TABLE 4 (South)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
32	**Minor nearshore rockfish & Black rockfish**						
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months
34	Deeper nearshore						
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months	
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
37	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	1,200 lb/ 2 months		
38	**Lingcod**[3/]	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months					
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
41	**Other fish**[4/] **& Cabezon**	Not limited					

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (North) to Part 660, Subpart G -- 2009-2010 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table 07102010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	45°03.83' N. lat. - 43°00' N. lat.	30 fm line[6/] - 125 fm line[6/ 7/]					
4	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
5	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
6	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
7	**Pacific ocean perch**	100 lb/ month					
8	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months			300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 2,750 lb/ 2 months		
9	**Thornyheads**	CLOSED					
10	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Arrowtooth flounder**						
12	**Petrale sole**						
13	**English sole**						
14	**Starry flounder**						
15	**Other flatfish[2/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor nearshore rockfish & Black rockfish**						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
22	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish[3/]				
23	**Lingcod[4/]**	CLOSED		400 lb/ month			CLOSED
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Other Fish[5/]**	Not limited					

TABLE 5 (North).

Table 5 (North). Continued

TABLE 5 (North) con't

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
27	**SALMON TROLL** *(subject to RCAs when retaining any species of groundfish except for yellowtail rockfish and lingcod, as described below)*						
28	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
29	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
30	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2010–20870 Filed 8–18–10; 4:15 pm]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 75, No. 162
Monday, August 23, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Document Number: AMS–FV–09–0047]

Perishable Agricultural Commodities Act: Impact of Post-Default Agreements on Trust Protection Eligibility

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: Due to requests from members of the fruit and vegetable industry, notice is hereby given that the comment period on the proposed rule published on June 8, 2010 [75 FR 32306] titled, Perishable Agricultural Commodities Act: Impact of Post-Default Agreements on Trust Protection Eligibility is reopened and extended for an additional 30 days. Reopening the comment period would allow interested parties time to fully analyze the proposed rule and submit comments.

DATES: Comments must be received by September 22, 2010.

ADDRESSES: You may submit written or electronic comments to PACA Trust Post-Default Comments, AMS, F&V Programs, PACA Branch, 1400 Independence Avenue, SW., Room 2095–S, Stop 0242, Washington, DC 20250–0242; fax: 202–720–8868; or Internet: *http://www.regulations.gov*. All comments should reference the document number, date, and page number of this issue and the June 8, 2010, issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Phyllis L. Hall or Josephine E. Jenkins, Trade Practices Section, 202–720–6873.

SUPPLEMENTARY INFORMATION: A proposed rule was published on June 8, 2010 (75 FR 32306). The proposed amendment to the regulations under the Perishable Agricultural Commodities Act (PACA) would allow a seller, supplier, or agent who has met the eligibility requirements to enter into a written scheduled payment agreement for payment of the past due amount while maintaining its trust eligibility.

The comment period for the proposed rule ended on August 9, 2010; however, several produce associations have requested an additional 30 days to provide comments that are more thorough. AMS believes it is beneficial to reopen and extend the comment period for an additional 30-days in order to receive input from all interested parties.

Authority: 7 U.S.C. 499a–499t.

Dated: August 17, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–20849 Filed 8–20–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0614; Directorate Identifier 2010–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Models BR700–710A1–10; BR700–710A2–20; and BR700–710C4–11 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Due to manufacturing problems of BR700–710 HP stage 1 and 2 turbine discs it was necessary to re-calculate the Declared Safe Cyclic Life (DSCL) for all BR700–710 HP turbine discs. The analysis concluded that it is required to reduce the approved life limits for the HP turbine disc part numbers that are listed in Table 1 and Table 2 of this AD (MCAI). Exceeding the revised approved life limits could potentially result in non-contained disc failure.

We are proposing this AD to prevent failure of the high-pressure turbine (HPT) stage 1 and stage 2 discs, uncontained engine failure, and damage to the airplane.

DATES: We must receive comments on this proposed AD by October 7, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany, telephone: +49 (0) 33–7086–1883, fax: +49 (0) 33–7086–3276, for the service information identified in this proposed AD.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments

to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0614; Directorate Identifier 2010–NE–24–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition may exist on Rolls-Royce Deutschland Ltd & Co KG Models BR700–710A1–10; BR700–710A2–20; and BR700–710C4–11 turbofan engines. The MCAI states:

> Due to manufacturing problems of BR700–710 HP stage 1 and 2 turbine discs it was necessary to re-calculate the Declared Safe Cyclic Life (DSCL) for all BR700–710 HP turbine discs. The analysis concluded that it is required to reduce the approved life limits for the HP turbine disc part numbers that are listed in Table 1 and Table 2 of this AD (MCAI). Exceeding the revised approved life limits could potentially result in non-contained disc failure.

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Germany and is approved for operation in the United States. Pursuant to our bilateral agreement with Germany, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require replacing the HPT stage 1 or HPT stage 2 discs with serviceable discs at the DSCL as applicable, as listed in Table 1 or Table 2 of the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1,026 BR700–710 engines of U.S. registry. We also estimate that no additional labor cost will be incurred to replace the discs. The average labor rate is $85 per work-hour. Required parts would cost about $6,000 per disc. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,156,000. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH): Docket No. FAA–2010–0614; Directorate Identifier 2010–NE–24–AD.

Comments Due Date

(a) We must receive comments by October 7, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG models BR700–710A1–10, BR700–710A2–20, and BR700–710C4–11 turbofan engines with any of the high-pressure turbine (HPT) stage 1 and stage 2 discs installed as listed by part number (P/N) in Table 1 and Table 2 of this AD. These engines are installed on, but not limited to, Gulfstream model G–V and GV–SP airplanes, and Bombardier model BD–700–1A10 and BD–700–1A11 airplanes.

TABLE 1—DECLARED SAFE CYCLIC LIFE OF AFFECTED HPT STAGE 1 DISCS

HPT Stage 1 disc p/n	Engine model	Declared safe cyclic life (flight cycles)
BRR21215	BR700–710A1–10	6,075
BRR21215	BR700–710A2–20	5,950
BRR22005	BR700–710A1–10	6,200
BRR22005	BR700–710A2–20	6,200
BRR22006	BR700–710A1–10	6,200
BRR22006	BR700–710A2–20	6,200
BRR22007	BR700–710A1–10	6,200
BRR22007	BR700–710A2–20	6,200
BRR22358	BR700–710A1–10	6,200
BRR22358	BR700–710A2–20	6,200
BRR23864	BR700–710A1–10	6,200
BRR23864	BR700–710A2–20	6,200
BRR23884	BR700–710A1–10	6,200
BRR23884	BR700–710A2–20	6,200
BRR23885	BR700–710A1–10	6,200
BRR23885	BR700–710A2–20	6,200
BRR23952	BR700–710A1–10	6,200
BRR23952	BR700–710A2–20	6,200
BRR23952	BR700–710C4–11 (Service Bulletin (SB) No. SB–BR700–72–101466 not incorporated).	6,200
BRR23952	BR700–710C4–11 (SB No. SB–BR700–72–101466 incorporated)	3,800
BRR23953	BR700–710A1–10	6,200
BRR23953	BR700–710A2–20	6,200
BRR23953	BR700–710C4–11 (SB No. SB–BR700–72–101466 not incorporated)	6,200
BRR23953	BR700–710C4–11 (SB No. SB–BR700–72–101466 incorporated)	3,800
BRR23954	BR700–710A1–10	6,200
BRR23954	BR700–710A2–20	6,200

TABLE 2—DECLARED SAFE CYCLIC LIFE OF AFFECTED HPT STAGE 2 DISCS

HPT Stage 2 disc p/n	Engine model	Declared safe cyclic life (flight cycles)
BRR18291	BR700–710A1–10	9,300
BRR21214	BR700–710A1–10	9,600
BRR21214	BR700–710A2–20	9,600
BRR22008	BR700–710A1–10	10,500
BRR22008	BR700–710A2–20	10,500
BRR22008	BR700–710C4–11 (SB No. SB–BR700–72–101466 not incorporated)	10,500
BRR22008	BR700–710C4–11 (SB No. SB–BR700–72–101466 incorporated)	3,700
BRR22009	BR700–710A1–10	10,500
BRR22009	BR700–710A2–20	10,500
BRR22009	BR700–710C4–11 (SB No. SB–BR700–72–101466 not incorporated)	10,500
BRR22009	BR700–710C4–11 (SB No. SB–BR700–72–101466 incorporated)	3,700
BRR22010	BR700–710A1–10	10,500
BRR22010	BR700–710A2–20	10,500
BRR22359	BR700–710A1–10	10,500
BRR22359	BR700–710A2–20	10,500

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI states:

Due to manufacturing problems of BR700–710 HP stage 1 and 2 turbine discs it was necessary to re-calculate the Declared Safe Cyclic Life (DSCL) for all BR700–710 HP turbine discs. The analysis concluded that it is required to reduce the approved life limits for the HP turbine disc part numbers that are listed in Table 1 and Table 2 of this AD (MCAI). Exceeding the revised approved life limits could potentially result in non-contained disc failure.

We are issuing this AD to prevent failure of the HPT stage 1 and stage 2 discs, uncontained engine failure, and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Within 30 days after the effective date of this AD, or upon accumulating the declared safe cyclic life indicated in Table 1 or Table 2 of this AD as applicable, whichever occurs later, initially replace the HPT stage 1 or HPT stage 2 discs with serviceable discs.

(2) Thereafter, upon accumulating the declared safe cyclic life indicated in Table 1 or Table 2 of this AD, as applicable, repetitively replace the HPT stage 1 or HPT stage 2 discs with serviceable discs.

FAA AD Differences

(f) None.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to European Aviation Safety Agency AD 2010–0075, dated April 20, 2010, and AD 2010–0076, dated April 20, 2010, for related information.

(i) Refer to Rolls-Royce Deutschland Ltd & Co KG SB No. SB–BR700–72–A900492, dated February 12, 2010, and SB No. SB–BR700–72–A900497, dated February 12, 2010, for related information. Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany, *telephone:* +49 (0) 33–7086–1883, *fax:* +49 (0) 33–7086–3276, for a copy of this service information.

(j) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on August 16, 2010.

Peter A. White,

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

[FR Doc. 2010–20757 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0042; Directorate Identifier 2009–NM–010–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B Airplanes Modified in Accordance With Supplemental Type Certificate (STC) SA00224WI–D, ST00146WI–D, or SA984GL–D

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B airplanes. The original NPRM would have required inspecting the fuselage surface for corrosion and cracking behind the external adapter plate of the antennae installation, and repair if necessary. The original NPRM resulted from a report of a crack found behind the external adapter plate of the antennae during inspection. Similar cracking was found on two additional airplanes, and extensive corrosion was found on one airplane. This action revises the original NPRM by correcting an STC number, which would expand the applicability of the original NPRM. We are proposing this supplemental NPRM to detect and correct corrosion and cracking behind the external adapter plate of the antennae of certain damage-tolerant structure, which could result in reduced structural integrity and consequent rapid depressurization of the airplane.

DATES: We must receive comments on this supplemental NPRM by September 17, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0042; Directorate Identifier 2009–NM–010–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued a notice of proposed rulemaking (NPRM) (the "original NPRM") to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B airplanes. That original NPRM was published in the **Federal Register** on January 19, 2010 (75 FR 2829). That original NPRM proposed to require inspecting the fuselage surface for corrosion and cracking behind the external adapter plate of the antennae installation, and repair if necessary.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we have determined that STC number SA00244WI–D, identified in the applicability of the NPRM, is an incorrect STC number; the correct number is SA00224WI–D. We have corrected this error, which expands the airplanes affected by the original NPRM.

Comments

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

Request To Change the Description of the Unsafe Condition

Saab AB/Aerosystems asks that we change the description of the unsafe condition specified in the NPRM. Saab states that the NPRM indicates that the fuselage skin is classified as "certain safe-life structure." Saab notes that this does not meet the definition of the airframe/fuselage structure; the fuselage skin is damage tolerant structure according to Section 25.571 of the Federal Aviation Regulations (14 CFR 25.571). Saab adds that this definition is included in the fatigue critical baseline structure (FCBS) list.

We agree with the commenter for the reasons provided. We have changed the description of the unsafe condition in the Summary section and paragraph (e) of this AD accordingly.

Request To Define Method To Repair Discrepancies

Saab asks that we define the method necessary to repair the discrepancies specified in the NPRM. Saab states that the NPRM does not give any details on how to repair those discrepancies. Saab adds that the method in the NPRM specifies that only approval by the Manager, Wichita Aircraft Certification Office (ACO), will be accepted.

We disagree with the commenter. The discrepancies referred to in this AD are corrosion, and cracking of the fuselage surface as a result of that corrosion. Each airplane may exhibit different extremes of both types of corrosion and cracking, and each repair must be evaluated by the ACO based on the extent of the damage. We have not changed the AD in this regard.

Request to Re-Evaluate the STC Procedures

Saab states that it has reservations about the STC procedures for installation of the TCAS antennae because of the possibility of compromised long-term effects on the airplane. Saab notes that the installation procedures include anchor nuts installed directly in the skin without anchor nut places, acceptance of improper edge distances, compromised surface protection, and no structural reinforcement of the antennae.

We infer that Saab is requesting re-evaluation of the STC procedures; we do not agree. The STC was approved by us in 1991, and there is not enough data at this time to warrant re-evaluation of the STC procedures. Corrosion issues are more than likely the result of the initial installer applying inadequate corrosion protection as indicated by the initial fleet data. Without additional fleet data to confirm otherwise, we cannot concur with any design inadequacies. Therefore, we have not changed the AD in this regard.

Request To Include Replacement Procedure for the Adapter Plate

Saab asks that a replacement procedure for corroded adapter plates be included in Chapter 51–70–60 of the Saab Structural Repair Manual (SRM). Saab states that typical installation of the antennae and associated actions is outlined in the SRM, and the antennae plates are subject to corrosion. Saab adds that a replacement procedure for the adapter plate should be included in the SRM to allow operators to install replacement plates according to design procedures.

We acknowledge and agree with the commenter's concern that the STC holder should have provided appropriate procedures for replacement of corroded adapter plates. Once STC procedures are developed, approved, and available, we might consider additional rulemaking. However, we consider that any further delay in issuing this supplemental NPRM would result in an unacceptable level of risk because doing so would allow the unsafe condition to continue for an indefinite length of time. Therefore, we have not changed the AD in this regard.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

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

Explanation of Change to Costs of Compliance

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

Costs of Compliance

We estimate that this proposed AD would affect 201 airplanes of U.S. registry. The proposed inspection would take about 4 work hours per airplane, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $68,340, or $340 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab AB, Saab Aerosystems: Docket No. FAA–2010–0042; Directorate Identifier 2009–NM–010–AD.

Comments Due Date

(a) We must receive comments by September 17, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Saab AB, Saab Aerosystems airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD, that have been modified in

accordance with Supplemental Type Certificate (STC) SA00224WI–D, ST00146WI–D, or SA984GL–D.

(1) Model SAAB 340A (SAAB/SF340A) airplanes, serial numbers 004 through 159 inclusive.

(2) Model SAAB 340B airplanes, serial numbers 160 through 459 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from a report of a crack found behind the external adapter plate of the antennae during inspection. Similar cracking was found on two additional airplanes, and extensive corrosion was found on one airplane. The Federal Aviation Administration is issuing this AD to detect and correct corrosion and cracking behind the external adapter plate of the antennae of certain damage-tolerant structure, which could result in reduced structural integrity and consequent rapid depressurization of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified.

Inspection/Corrective Actions

(g) Within 600 flight cycles after the effective date of this AD: Remove the external adapter plate of the antennae installation and do a general visual inspection of the fuselage surface for corrosion and cracking behind the external adapter plate of the antennae installation. If any corrosion or cracking is found, repair before further flight. If no corrosion or cracking is found, before further flight, ensure that proper corrosion protection has been applied before reinstalling the adapter plate. Do all the actions required by this paragraph in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Reporting Requirement

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Submit a report of the positive findings of the inspections required by paragraph (g) of this AD. Send the report to the Manager, Wichita ACO. The report must contain, at a minimum, the inspection results, a description of any discrepancies found, the airplane serial number, and the number of flight cycles and flight hours on the airplane since installation of the STC. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Special Flight Permit

(i) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be issued to operate the airplane to a location where the requirements of this AD can be accomplished, but concurrence by the Manager, Wichita ACO, FAA, is required prior to issuance of the special flight permit.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Wichita ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington on August 16, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–20852 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0803; Directorate Identifier 2010–NM–124–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes; and Model A300 B4–600, A300 B4–600R, A300 F4–600R Series Airplanes, and Model A300 C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: The ball screw nut assemblies of the first 70 Trimmable Horizontal Stabilizer Actuators (THSA) manufactured by Goodrich were fitted with an upper attachment gimbal having a thickness of 58 mm (2.28 in), which is different from the design of the final production standard. The gimbal installed on the subsequent THSAs (final production standard) is more robust, having a thickness of 70mm (2.76 in). During the fatigue life demonstration of the THSA upper attachment primary load path elements, only a gimbal having a thickness of 70mm (2.76 in) was used. Thereafter, no additional justification work to demonstrate the robustness of the upper attachment fitted with a gimbal of 58 mm was accomplished. In case of failure of this gimbal, the THSA upper attachment primary load path would be lost and the THSA upper attachment secondary load path would engage. Because the upper attachment secondary load path will only withstand the loads for a limited period of time, the condition where it would be engaged and not detected could lead to failure of the secondary load path, which would likely result in loss of control of the aeroplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 7, 2010.

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

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

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0803; Directorate Identifier 2010–NM–124–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0092, dated May 21, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> The ball screw nut assemblies of the first 70 Trimmable Horizontal Stabilizer Actuators (THSA) manufactured by Goodrich were fitted with an upper attachment gimbal having a thickness of 58 mm (2.28 in), which is different from the design of the final production standard. The gimbal installed on the subsequent THSAs (final production standard) is more robust, having a thickness of 70 mm (2.76 in).
>
> During the fatigue life demonstration of the THSA upper attachment primary load path elements, only a gimbal having a thickness of 70mm (2.76 in) was used. Thereafter, no additional justification work to demonstrate the robustness of the upper attachment fitted with a gimbal of 58 mm was accomplished.
>
> In case of failure of this gimbal, the THSA upper attachment primary load path would be lost and the THSA upper attachment secondary load path would engage.
>
> Because the upper attachment secondary load path will only withstand the loads for a limited period of time, the condition where it would be engaged and not detected could lead to failure of the secondary load path, which would likely result in loss of control of the aeroplane.
>
> As the affected ball screw nut assemblies (including the gimbal) could have been moved from one THSA to another during maintenance operation and because the change from the old design to the final production standard design is not identified through a dedicated THSA Part Number, a gimbal with thickness of 58 mm (2.28 in) can be fitted on any A310 or A300–600 aeroplane.
>
> For the reasons described above, this AD requires the identification of the THSA which have a 58 mm (2.28 in) gimbal installed, repetitive [general visual] inspections to check whether there is engagement of the secondary load path and, depending on findings, associated corrective action(s).

Corrective actions include contacting Airbus for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletins A300–27A6067, Revision 01, including Appendix 01, dated May 12, 2010; and A310–27A2104, Revision 01, including Appendix 01, dated May 12, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 170 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $28,900, or $170 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2010–0803; Directorate Identifier 2010–NM–124–AD.

Comments Due Date

(a) We must receive comments by October 7, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, and F4–622R airplanes; Model A300 C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category, all certified models, all manufacturer serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

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

The ball screw nut assemblies of the first 70 Trimmable Horizontal Stabilizer Actuators (THSA) manufactured by Goodrich were fitted with an upper attachment gimbal having a thickness of 58 mm (2.28 in), which is different from the design of the final production standard. The gimbal installed on the subsequent THSAs (final production standard) is more robust, having a thickness of 70mm (2.76 in).

During the fatigue life demonstration of the THSA upper attachment primary load path elements, only a gimbal having a thickness of 70mm (2.76 in) was used. Thereafter, no additional justification work to demonstrate the robustness of the upper attachment fitted with a gimbal of 58 mm was accomplished.

In case of failure of this gimbal, the THSA upper attachment primary load path would be lost and the THSA upper attachment secondary load path would engage.

Because the upper attachment secondary load path will only withstand the loads for a limited period of time, the condition where it would be engaged and not detected could lead to failure of the secondary load path, which would likely result in loss of control of the aeroplane.

Compliance

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

Actions

(g) Within 130 flight cycles or 650 flight hours after the effective date of this AD, whichever occurs first, measure the thickness of the trimmable horizontal stabilizer actuators (THSA) upper attachment gimbal, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27A6067, Revision 01, dated May 12, 2010 (for Model A300–600 series airplanes); or A310–27A2104, Revision 01, dated May 12, 2010 (for Model A310 series airplanes).

(1) If, during the measurement required by paragraph (g) of this AD, the gimbal thickness is 58 mm (2.28 in.) ±5 mm (0.20 in.), before further flight, do a general visual inspection of the THSA upper attachment to determine if the THSA upper attachment secondary load path is engaged, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27A6067, Revision 01, dated May 12, 2010 (for Model A300–600 series airplanes); or A310–27A2104, Revision 01, dated May 12, 2010 (for Model A310 series airplanes). Repeat the inspection thereafter at intervals not to exceed 130 flight cycles or 650 flight hours, whichever occurs first, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–27A6067, Revision 01, dated May 12, 2010 (for Model A300–600 series airplanes); or A310–27A2104, Revision 01, dated May 12, 2010 (for Model A310 series airplanes).

(2) If, during the measurement required by paragraph (g) of this AD, the gimbal thickness is not 58 mm (2.28 in.) ±5 mm (0.20 in.), except for the requirements of paragraph (k) of this AD, no further action is required of this AD.

(h) If, during any inspection required by paragraph (g)(1) of this AD, the THSA upper attachment secondary load path is found to be engaged, before further flight, contact Airbus for repair instructions and do the repair.

Actions Accomplished According to Previous Issue of Service Bulletin

(i) Actions accomplished before the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A300–27A6067 (for Model A300–600 series airplanes) or A310–27A2104 (for Model A310 series airplanes), both dated May 6, 2010, are considered acceptable for compliance with the corresponding action specified in this AD.

Reporting Requirement

(j) Submit a report of the findings (both positive and negative) of the measurement required by paragraph (g) of this AD to Airbus, as identified in Appendix 01 of Airbus Mandatory Service Bulletin A300–27A6067, Revision 01, dated May 12, 2010 (for Model A300–600 series airplanes); or A310–27A2104, Revision 01, dated May 12, 2010 (for Model A310 series airplanes); at the applicable time specified in paragraph (l)(1) or (l)(2) of this AD. The report must include the information specified in Appendix 01 of Airbus Mandatory Service Bulletin A300–27A6067, Revision 01, dated May 12, 2010 (for Model A300–600 series airplanes); or A310–27A2104, Revision 01, dated May 12, 2010 (for Model A310 series airplanes).

(1) If the measurement was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the measurement was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Parts Installation

(k) As of the effective date of this AD, no person may install, on any airplane, a THSA, unless it is in compliance with the requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI does not include a reporting requirement; however, the service bulletin recommends reporting. Paragraph (j) of this AD specifies a reporting requirement.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(m) Refer to MCAI EASA Airworthiness Directive 2010–0092, dated May 21, 2010; Airbus Mandatory Service Bulletin A330–27A6067, Revision 01, dated May 12, 2010; and Airbus Mandatory Service Bulletin A310–27A2104, Revision 01, dated May 12, 2010; for related information.

Issued in Renton, Washington, on August 16, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–20854 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0802; Directorate Identifier 2009–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Inc. Model 45 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Learjet Inc. Model 45 airplanes. The existing AD currently requires, for certain airplanes, repetitive inspections for chafing and other damage of the case drain tube from the hydraulic pump case installed on the left-hand engine, and corrective action if necessary. The existing AD also requires, for all airplanes, repetitive inspections for discrepancies of the left engine's nacelle tubing, repetitive inspections for evidence of fluid leakage within the left engine accessory compartment, and corrective actions if necessary. This proposed AD would require replacing the left engine fuel and hydraulic tubing and installing a tubing support channel, which would terminate the repetitive inspections required in the existing AD. This proposed AD also removes airplanes from the applicability. This proposed AD results from reports of chafed hydraulic tubes in the left-hand engine. We are proposing this AD to detect and correct chafed hydraulic tubes in the left-hand engine and consequent hydraulic tube failure and uncontrolled loss of flammable fluid within the engine cowling, which could result in a fire in the engine nacelle and loss of control of the airplane.

DATES: We must receive comments on this proposed AD by October 7, 2010.

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

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

For service information identified in this proposed AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone: 316–946–2000; fax: 316–946–2220; e-mail: *ac.ict@aero.bombardier.com;* Internet: *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0802; Directorate Identifier 2009–NM–256–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On May 20, 2009, we issued AD 2009–11–13, amendment 39–15923 (74 FR 26288, June 2, 2009), for certain Learjet Inc. Model 45 airplanes. That AD requires, for certain airplanes, repetitive inspections for chafing and other damage of the case drain tube from the hydraulic pump case installed on the left-hand engine, and corrective action if necessary. This AD also requires, for all airplanes, repetitive inspections for discrepancies of the left engine's nacelle tubing, repetitive inspections for evidence of fluid leakage within the left engine accessory compartment, and corrective actions if necessary. That AD resulted from reports of chafed hydraulic tubes in the left-hand engine. We issued that AD to detect and correct chafed hydraulic tubes in the left-hand engine and consequent hydraulic tube failure and uncontrolled loss of flammable fluid within the engine cowling, which could result in a fire in the engine nacelle and loss of control of the airplane.

Actions Since Existing AD Was Issued

The preamble to AD 2009–11–13 specifies that we consider the requirements "interim action" and that the manufacturer is developing a modification to address the unsafe condition. That AD explains that we might consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Changes to the Applicability

The applicability of AD 2009–11–13 includes airplanes having serial numbers (S/N) 45–002 through 45–4000 inclusive. This proposed AD would apply to airplanes having S/Ns 45–005 through 45–405 inclusive, and 45–2001 through 45–2126 inclusive. Airplanes having S/Ns 45–406 through 45–2000 and 45–2127 through 45–4000, have incorporated a design change in production that addresses the identified unsafe condition, and therefore we removed these airplanes from the applicability. We also removed S/N 45–002 because it is an experimental airplane at Learjet, and we removed S/Ns 45–003 and 45–004 because they no longer exist.

Relevant Service Information

We have reviewed Bombardier Service Bulletins 40–71–04 (Model 45, serial numbers 45–2001 through 45–2126) and 45–71–7 (Model 45, serial numbers 45–005 through 45–405), both dated December 7, 2009. These service bulletins describe procedures for replacing the left engine fuel and hydraulic tubing and installing a tubing support channel, including doing a general visual inspection for galling of the fuel supply manifold assembly, a general visual inspection for minimum clearance between the firewall fuel supply tube assembly and the engine firewall cutout, a general visual inspection for minimum clearance between the lower nacelle hydraulic tube and hose assemblies, a general visual inspection for minimum clearance between the lower nacelle fuel tubes and flexible hoses, and corrective actions if necessary. The corrective actions include replacing the fuel supply manifold, trimming the cutout to meet minimum clearance specifications, and adjusting parts to meet minimum clearance specifications. Modification of the applicable in-service airplanes eliminates the need for the existing requirements of AD 2009–11–13.

Bombardier Service Bulletin 45–71–7, dated December 7, 2009, specifies prior or concurrent accomplishment of Bombardier Service Bulletin 45–71–5, dated February 13, 2007, for airplanes having serial numbers 45–005 through 45–319, and 45–321. Bombardier Service Bulletin 40–71–04, dated December 7, 2009, specifies prior or concurrent accomplishment of Bombardier Service Bulletin 40–71–02, dated February 13, 2007, for airplanes having serial numbers 45–2001 through 45–2069. Bombardier Service Bulletins 45–71–5 and 40–71–02, both dated February 13, 2007, describe the following procedures:

- For certain airplanes, changing the routing and clamping configuration of the engine and alternator wire harnesses, and the starter/generator wire bundles.
- For certain airplanes, doing a detailed inspection for chafing of specific hydraulic tubes located within the left engine nacelle between the adjacent fuel tubes and to determine if there is interference between the fuel tubing and hydraulic tubing, securing the hydraulic tubes with additional clamps, inspecting adjacent fuel tubing for interference with the hydraulic tubing, and corrective actions if necessary. Corrective actions include replacing chafed hydraulic tubes and replacing fuel tubes if interference is found.
- For certain airplanes, replacing the left engine hydraulic pump case drain tube.
- For certain airplanes, inspecting for clearance between the left engine hydraulic tubing with adjacent tubing, structure, and other components; and replacing tubing if necessary.
- For all airplanes, inspecting for clearance between the wire harnesses and the hydraulic and fuel tubing on the left engines, if necessary; and replacing tubing if necessary.
- For certain airplanes, inspecting for clearance between the wire harnesses and the hydraulic and fuel tubing on the right engines, if necessary; and replacing tubing if necessary.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2009–11–13 and would retain the requirements of the existing AD until the modification is done. This proposed AD would also require accomplishing the actions specified in Bombardier Service Bulletins 40–71–04 and 45–71–7, both dated December 7, 2009; and Bombardier Service Bulletins 40–71–02 and 45–71–5, both dated February 13, 2007.

Costs of Compliance

There are about 530 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2009–11–13).	3	$85	$0	$255 per inspection.	325	$82,875 per inspection.
Modification (new proposed action)	20	85	Up to $14,740	Up to $16,440	358	Up to $5,885,520.
Concurrent Action	4	85	$189	$529	358	$189,382.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–15923 (74 FR 26288, June 2, 2009) and adding the following new AD:

Learjet Inc.: Docket No. FAA–2010–0802; Directorate Identifier 2009–NM–256–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 7, 2010.

Affected ADs

(b) This AD supersedes AD 2009–11–13, Amendment 39–15923.

Applicability

(c) This AD applies to Learjet Inc. Model 45 airplanes; certificated in any category; serial numbers 45–005 through 45–405 inclusive, and 45–2001 through 45–2126 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 71: Powerplant.

Unsafe Condition

(e) This AD results from reports of chafed hydraulic tubes in the left-hand engine. The Federal Aviation Administration is issuing this AD to detect and correct chafed hydraulic tubes in the left-hand engine and consequent hydraulic tube failure and uncontrolled loss of flammable fluid within the engine cowling, which could result in a fire in the engine nacelle and loss of control of the airplane.

Compliance

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

Restatement of Requirements of AD 2009–11–13, With No Changes

Repetitive Inspections: Case Drain Tube

(g) For airplanes having serial numbers identified in Table 1 of this AD: Within 50 flight hours after June 17, 2009 (the effective date of AD 2009–11–13), do a detailed inspection for chafing and other damage of the case drain tube from the hydraulic pump case installed on the left-hand engine, in accordance with the applicable service bulletin identified in Table 1 of this AD. If any damage is found, before further flight, reposition or replace the tube, as applicable, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD. Repeat the inspection thereafter at intervals not to exceed 150 flight hours until the modification required by paragraph (l) of this AD is done.

TABLE 1—SERVICE BULLETINS FOR INSPECTIONS

For—	Use—
Serial numbers 45–005 through 45–313 inclusive (commonly referred to as "M45" airplanes).	Bombardier Alert Service Bulletin A45–29–15, dated December 26, 2006.
Serial numbers 45–2001 through 45–2063 inclusive (commonly referred to as "M40" airplanes).	Bombardier Alert Service Bulletin A40–29–03, dated December 26, 2006.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Repetitive Inspections: Nacelle Tubing

(h) Within 50 flight hours after June 17, 2009, do a detailed inspection for discrepancies of the left engine's nacelle tubing, in accordance with the applicable temporary revision (TR) identified in Table 2 of this AD. Discrepancies include damaged tubing, and inadequate clearance between any unsupported section of the tube or other tubing and surrounding components. If any discrepancy is found, before further flight, adjust the tubing and clamping or replace the tubing, as applicable, in accordance with the applicable TR identified in Table 2 of this AD. Repeat the inspection thereafter at intervals not to exceed 150 flight hours until the modification required by paragraph (l) of this AD is done.

TABLE 2—TRs FOR INSPECTIONS

For—	Use—
Serial numbers 45–2001 through 45–4000 inclusive (commonly referred to as "M40" airplanes).	Learjet 40 TR 71–1, dated April 28, 2009, to the Learjet 40 Maintenance Manual MM–105.
Serial numbers 45–002 through 45–2000 inclusive (commonly referred to as "M45" airplanes).	Learjet 45 TR 71–1, dated April 28, 2009, to the Learjet 45 Maintenance Manual MM–104.

Concurrent Inspections: Fluid Leakage

(i) Concurrently with each inspection required by paragraph (h) of this AD, do a detailed inspection for evidence of engine oil, hydraulic fluid, or fuel leakage within the left engine accessory compartment, in accordance with the applicable maintenance manual section identified in Table 3 of this AD. If there is evidence of leakage: Before further flight, remove each plumbing clamp within the inspection areas specified in paragraphs (g) and (h) of this AD, and clean and remove all evidence of fluid leakage.

TABLE 3—MAINTENANCE MANUAL SECTIONS FOR INSPECTIONS

For—	Use—
Serial numbers 45–002 through 45–2000 inclusive (commonly referred to as "M45" airplanes).	Section 71–00–00, "Powerplant—Maintenance Practices," and Section 71–00–01, "Engine—Maintenance Practices," of the Learjet 45 Maintenance Manual MM–104, Revision 47, dated March 30, 2009.
Serial numbers 45–2001 through 45–4000 inclusive (commonly referred to as "M40" airplanes).	Section 71–00–01, "Engine—Maintenance Practices," of the Learjet 40 Maintenance Manual MM–105, Revision 15, dated March 30, 2009.

Additional Corrective Action for Fluid Leakage and Inadequate Clearance

(j) If evidence of fluid leakage was found during any inspection required by paragraph (i) of this AD, or if inadequate clearance was found during any action required by paragraph (g) or (h) of this AD: Before further flight, replace each clamp associated with the fluid leakage or inadequate clearance with a new clamp, in accordance with the applicable maintenance manual identified in Table 3 of this AD.

Parts Installation

(k) As of June 17, 2009, no person may reinstall, on any airplane, any plumbing clamp that has been removed in accordance with the requirements of paragraphs (g), (h), (i), or (j) of this AD.

New Requirements of This AD

Terminating Action

(l) Within 300 flight hours or 12 months after the effective date of this AD, whichever occurs first, do the actions specified in paragraphs (l)(1) and (l)(2) of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 40–71–04 (Model 45, serial numbers 45–2001 through 45–2126) or 45–71–7 (Model 45, serial numbers 45–005 through 45–405), both dated December 7, 2009, as applicable. Accomplishment of the requirements of paragraphs (l) and (m), as applicable, of this AD terminates the requirements of paragraphs (g), (h), (i), and (j) of this AD.

(1) Replace the left engine fuel and hydraulic tubing and install a tubing support channel using new parts.

(2) Do the inspections specified in paragraphs (l)(2)(i), (l)(2)(ii), (l)(2)(iii), and (l)(2)(iv) of this AD and all applicable corrective actions. Do all applicable corrective actions before further flight.

(i) A general visual inspection for galling of the fuel supply manifold assembly;

(ii) A general visual inspection for minimum clearance between the firewall fuel supply tube assembly and the engine firewall cutout;

(iii) A general visual inspection for minimum clearance between the lower nacelle hydraulic tube and hose assemblies; and

(iv) A general visual inspection for minimum clearance between the lower nacelle fuel tubes and flexible hoses.

(m) For airplanes having serial numbers 45–005 through 45–319, and 45–321, as identified in Bombardier Service Bulletin 45–71–5, dated February 13, 2007; and for airplanes having serial numbers 45–2001 through 45–2069, as identified in Bombardier Service Bulletin 40–71–02, dated February 13, 2007: Before or concurrently with accomplishing the requirements of paragraph (l) of this AD, do the applicable actions specified in paragraphs (m)(1), (m)(2), (m)(3), (m)(4), and (m)(5) of this AD, depending on airplane serial number and configuration, as specified in, and in accordance with, the Accomplishment Instructions of Bombardier Service Bulletin 45–71–5 (Model 45, serial numbers 45–005 through 45–319, and 45–321), dated February 13, 2007; and Bombardier Service Bulletin 40–71–02 (Model 45, serial numbers 45–2001 through 45–2069), dated February 13, 2007; as applicable. Do all applicable corrective actions before further flight. If, during any inspection required by paragraph (m)(3), (m)(4), or (m)(5) of this AD, it is determined that clearances are not met, before further flight, replace the tubing in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 45–71–5, dated February 13, 2007; and Bombardier Service Bulletin 40–71–02, dated February 13, 2007; as applicable.

(1) Change the routing and clamping configuration of the engine and alternator wire harnesses and the starter/generator wire bundles.

(2) Do a detailed inspection for chafing damage of specific hydraulic tubes located within the left engine nacelle between the adjacent fuel tubes and to determine if there is interference between the fuel tubing and hydraulic tubing; secure hydraulic tubes with additional clamps, inspect adjacent fuel tubing for interference with the hydraulic tubing, replace the left engine hydraulic pump case drain tube on certain airplanes, and do all applicable corrective actions.

(3) Do a general visual inspection for clearance between the left engine hydraulic

tubing with adjacent tubing, structure, and other components.

(4) Do a general visual inspection for clearance between the wire harnesses and the hydraulic and fuel tubing on the left engine.

(5) Do a general visual inspection for clearance between the wire harnesses and the hydraulic and fuel tubing on the right engine.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: James Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4107.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) AMOCs approved previously in accordance with AD 2009–11–13, amendment 39–15923, are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on August 16, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–20853 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0801; Directorate Identifier 2010–NM–054–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600 and A300 B4–600R Series Airplanes, Model A300 F4–605R Airplanes, and Model A300 C4–605R Variant F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: A recent Widespread Fatigue Damage (WFD) calculation on A300–600 aeroplanes has shown that a reinforcement of the upper fuselage circumferential joint at FR (frame) 58 is necessary to enable the aeroplane to reach the Extended Service Goal (ESG). The failure of the circumferential joint of the upper fuselage could affect the structural integrity of the aeroplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 7, 2010.

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

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

For service information identified in this proposed AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax: +33 5 61 93 44 51; *e-mail: account.airworth-eas@airbus.com;* Internet: *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0801; Directorate Identifier 2010–NM–054–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0007, dated January 7, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> A recent Widespread Fatigue Damage (WFD) calculation on A300–600 aeroplanes has shown that a reinforcement of the upper fuselage circumferential joint at FR (frame) 58 is necessary to enable the aeroplane to reach the Extended Service Goal (ESG).
>
> The failure of the circumferential joint of the upper fuselage could affect the structural integrity of the aeroplane.
>
> For the reasons described above, this AD requires the reinforcement of the affected fuselage frame butt joint.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A300–53–6146, Revision 01,

including Appendix 1, dated June 26, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 124 products of U.S. registry. We also estimate that it would take about 347 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $5,670 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,360,460, or $35,165 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2010–0801; Directorate Identifier 2010–NM–054–AD.

Comments Due Date

(a) We must receive comments by October 7, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R airplanes on which modification 12699 has not been accomplished; and Model A300 C4–605R Variant F airplanes; certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

A recent Widespread Fatigue Damage (WFD) calculation on A300–600 aeroplanes has shown that a reinforcement of the upper fuselage circumferential joint at FR (frame) 58 is necessary to enable the aeroplane to reach the Extended Service Goal (ESG).

The failure of the circumferential joint of the upper fuselage could affect the structural integrity of the aeroplane.

Compliance

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

Actions

(g) Before the accumulation of 42,500 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, reinforce the fuselage butt joint at FR 58 in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–6146, Revision 01, including Appendix 1, dated June 26, 2009.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or

principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(i) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0007, dated January 7, 2010; and Airbus Mandatory Service Bulletin A300–53–6146, Revision 01, dated June 26, 2009; for related information.

Issued in Renton, Washington, on August 13, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–20855 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 40, and 301

[REG–153340–09]

RIN 1545–BJ13

Electronic Funds Transfer of Depository Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to Federal tax deposits (FTDs) by Electronic Funds Transfer (EFT). The proposed regulations affect all taxpayers that currently use FTD coupons. In response to the decision of the Financial Management Service to discontinue the system that processes FTD coupons, the proposed regulations provide rules under which depositors must use EFT for all FTDs and eliminate the rules regarding FTD coupons. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 22, 2010. Outlines of topics to be discussed at the public hearing scheduled for September 21, 2010, must be received by September 20, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–153340–09), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–153340–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–153340–09). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael E. Hara, (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regina Johnson, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1), the Employment Tax and Collection of Income Tax at the Source Regulations (26 CFR part 31), the Excise Tax Procedural Regulations (26 CFR part 40), and the Procedure and Administration Regulations (26 CFR part 301), to require that all FTDs be made by EFT.

These proposed regulations are expected to be finalized by the end of 2010. The final regulations are expected to apply to remittances made after the date that final regulations are published in the **Federal Register**, but in no event earlier than January 1, 2011.

Explanation of Provisions

1. Requirement To Make Deposits by Electronic Funds Transfer

Section 6302(h) of the Internal Revenue Code (Code) authorizes the Secretary to prescribe regulations as may be necessary for the development and implementation of an EFT system that is required to be used for the collection of depository taxes. On July 14, 1997, final regulations under section 6302(h) relating to the collection of Federal tax deposits (FTDs) by EFT (TD 8723, 62 FR 37490) were issued. These final regulations phased in depositors to the EFT system through 1999. In the final stages of the phase-in under those regulations, depositors with more than $50,000 in employment tax deposits during calendar year 1995, 1996, or 1997, and depositors that, in any of those years, had no employment tax deposits but made deposits of other FTDs exceeding $50,000, were required to begin to deposit by EFT.

On July 13, 1999, final regulations amending TD 8723 (TD 8828, 64 FR 37675) were issued. Under those regulations, which are currently in effect, depositors whose aggregate annual FTDs exceed $200,000 generally must use EFT. Depositors that exceed the $200,000 threshold have an initial one-year grace period after which they must use EFT in all later years even if their FTDs fall below the threshold.

The Electronic Federal Tax Payment System (EFTPS) is the EFT system currently used by the Treasury Department to collect FTDs. More than 97.5 percent of all FTDs are currently deposited electronically through EFTPS. Depositors not currently required to use EFTPS for deposits may instead use the paper-based FTD coupon system to make a deposit by presenting a check and an FTD coupon to a bank teller at one of approximately 8,000 financial institutions authorized as a government depositary or to a financial agent, a process that dates back to World War I.

These proposed regulations are being issued to effectuate system changes made by the Financial Management Service (FMS), a Bureau of the Treasury Department. Beginning in 2011, FMS is eliminating the system that enables the processing of FTD coupons. Accordingly, these proposed regulations require the use of EFT for all FTDs, effective January 1, 2011. The proposed regulations remove references to "banking" days and provide that, if the day an FTD would otherwise be due is a Saturday, Sunday, or legal holiday under section 7503, the taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday. The proposed regulations do not change existing rules for determining a depositor's status as either a monthly or semi-weekly depositor for employment taxes. The proposed regulations also do not change existing rules on whether a taxpayer can remit taxes with a return in lieu of making an FTD.

For example, under the proposed regulations, employers must deposit income taxes withheld from wages and taxes under the Federal Insurance Contributions Act (FICA) (collectively, "employment taxes") by EFT unless the

existing *de minimis* rule under § 31.6302–1T(f)(4) applies. Generally, the *de minimis* rule for employment taxes allows employers with a deposit liability of less than $2,500 for a return period to remit employment taxes with their quarterly or annual return. Employers below the $2,500 threshold may remit the employment taxes with their tax return, may voluntarily make deposits by EFT, or may use other methods of payment as provided by the instructions relating to the return.

2. Taxes Required To Be Deposited by EFT

Because the FTD coupon system will be eliminated by FMS, the proposed regulations require all FTDs of the following taxes to be made by EFT:

1. Corporate income and corporate estimated taxes pursuant to § 1.6302–1;
2. Unrelated business income taxes of tax-exempt organizations under section 511 pursuant to § 1.6302–1;
3. Private foundation excise taxes under section 4940 pursuant to § 1.6302–1;
4. Taxes withheld on nonresident aliens and foreign corporations pursuant to § 1.6302–2;
5. Estimated taxes on certain trusts pursuant to § 1.6302–3;
6. FICA taxes and withheld income taxes pursuant to § 31.6302–1;
7. Railroad retirement taxes pursuant to § 31.6302–2;
8. Nonpayroll taxes, including backup withholding pursuant to § 31.6302–4;
9. Federal Unemployment Tax Act (FUTA) taxes pursuant to § 31.6302(c)–3; and
10. Excise taxes reported on Form 720, Quarterly Federal Excise Tax Return, pursuant to § 40.6302(c)–1.

3. Benefits of EFTPS

The benefits to taxpayers using EFTPS are substantial. According to IRS data, depositors using EFTPS are 31 times less likely to make an error resulting in a penalty than depositors using an FTD coupon. Depositors can schedule an EFTPS transaction 120 days in advance of the desired payment date at their convenience, 24 hours a day, 365 days a year. EFTPS also provides a confirmation number, called an "EFT Number," which guarantees depositors that the tax deposit has been scheduled and allows the transaction to be traced if necessary. EFTPS processes over 100 million transactions per year, totaling nearly $2 trillion dollars, with an error rate of 0.18 percent. In addition, many financial institutions are no longer accepting FTD coupons through their branch infrastructure. Eliminating FTD coupons will also result in projected cost savings for the Federal Government of at least $65 million over the first five years, with an estimated savings of $13 million each year thereafter.

These proposed regulations also align with the Treasury Department's broad initiative to significantly increase the number of electronic transactions between taxpayers and the Federal Government. In addition to greatly reducing costs, enhancing customer service, and minimizing Treasury's environmental impact, the move from paper to electronic transactions will increase reliability, safety, and security for taxpayers.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because this regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on the clarity of the proposed regulations and how they can be made more understandable. Comments are also requested on the accuracy of the certification that the regulations in this document will not have a significant economic impact on a substantial number of small entities. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 21, 2010, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by September 22, 2010 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by September 20, 2010. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, 40, and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for Section 1.1461–1 and 1.6302–1 through 1.6302–4 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1461–1, 1.6302–1, 1.6302–2, 1.6302–3 and 1.6302–4 also issued under 26 U.S.C. 6302(h). * * *

Par. 2. Section 1.1461–1 is amended by revising paragraph (a)(1), first sentence, to read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

(a) *Payment of withheld tax*—(1) *Deposits of tax.* Every withholding agent who withholds tax pursuant to chapter 3 of the Internal Revenue Code (Code) and the regulations under such chapter shall deposit such amount of tax as provided in § 1.6302–2(a). * * *

* * * * *

Par. 3. Section 1.6302–1 is amended by:

1. Revising the heading.
2. Revising paragraph (a).
3. Removing paragraph (b)(1) and redesignating paragraph (b)(2) as paragraph (b).
4. Removing paragraph (c).
5. Redesignating paragraph (d) as paragraph (c).
6. Adding paragraph (d).

The revisions and additions read as follows:

§ 1.6302–1 Deposit rules for corporation income and estimated income taxes and certain taxes of tax-exempt organizations.

(a) *Requirement.* A corporation, any organization subject to the tax imposed by section 511, and any private foundation subject to the tax imposed by section 4940 shall deposit all payments of tax imposed by chapter 1 of the Internal Revenue Code (or treated as so imposed by section 6154(h)), including any payments of estimated tax, on or before the date otherwise prescribed for paying such tax. This paragraph (a) does not apply to a foreign corporation or entity that has no office or place of business in the United States.

(b) *Deposits by electronic funds transfer.* * * *

* * * * *

(d) *Effective/applicability date.* This section applies to deposits and payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 4. Section 1.6302–2 is amended by:

1. Revising the heading.
2. Revising paragraphs (a)(1)(i), (ii), and (iv).
3. Revising the heading for paragraph (b).
4. Revising paragraph (b)(1).
5. Removing paragraph (b)(6).
6. Adding a sentence to the end of paragraph (g).

The revisions and additions read as follows:

§ 1.6302–2 Deposit rules for tax withheld on nonresident aliens and foreign corporations.

(a) *Time for making deposits*—(1) *Deposits*—(i) *Monthly deposits.* Except as provided in paragraphs (a)(1)(ii) and (iv) of this section, every withholding agent that, pursuant to chapter 3 of the Internal Revenue Code, has accumulated at the close of any calendar month an aggregate amount of undeposited taxes of $200 or more shall deposit such aggregate amount within 15 days after the close of such calendar month. However, the preceding sentence shall not apply if the withholding agent has made a deposit of taxes pursuant to paragraph (a)(1)(ii) of this section to a quarter monthly period that occurred during such month. With respect to section 1446, this section applies only to a publicly traded partnership described in § 1.1446–4.

(ii) *Quarter-monthly deposits.* If at the close of any quarter-monthly period within a calendar month, the aggregate amount of undeposited taxes required to be withheld pursuant to chapter 3 of the Internal Revenue Code is $2,000 or more, the withholding agent shall deposit such aggregate amount within 3 business days after the close of such quarter-monthly period. Business days include every calendar day other than Saturdays, Sundays, or legal holidays under section 7503. If any of the three weekdays following the close of a quarter-monthly period is a legal holiday under section 7503, the withholding agent has an additional day for each day that is a legal holiday by which to make the required deposit. For example, if the Monday following the close of a quarter-monthly period is New Year's Day, a legal holiday, the required deposit for the quarter-monthly period is not due until the following Thursday rather than the following Wednesday.

* * * * *

(iv) *Annual deposits.* If at the close of December of each calendar year, the aggregate amount of undeposited taxes required to be withheld pursuant to chapter 3 of the Internal Revenue Code is less than $200, the withholding agent may deposit such aggregate amount by March 15 of the following calendar year. If such aggregate amount is not so deposited, it shall be remitted in accordance with paragraph (a)(1) of § 1.1461–1.

* * * * *

(b) *Manner of payment*—(1) *Payments not required by electronic funds transfer.* A payment that is not required to be deposited by this section shall be made separately from a payment required by any other section. The payment may be submitted with the filed return. The timeliness of the payment will be determined by the date payment is received by the Internal Revenue Service at the place prescribed for filing by regulations or forms and instructions, or if section 7502(a) applies, by the date the payment is treated as received under section 7502(a). Each withholding agent making payments under this section shall report on the return, for the period to which such payments are made, information regarding such payments according to the instructions that apply to such return.

* * * * *

(g) * * * Paragraph (b)(1) of this section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 5. Section 1.6302–3 is amended by:

1. Revising the heading.
2. Revising paragraph (a).
3. Revising paragraph (c).
4. Adding paragraph (d).

The revisions and additions read as follows:

§ 1.6302–3 Deposit rules for estimated taxes of certain trusts.

(a) *Requirement.* A bank or other financial institution described in paragraph (b) of this section shall deposit all payments of estimated tax under section 6654(l) with respect to trusts for which such institution acts as a fiduciary by the date otherwise prescribed for paying such tax in the manner set forth in published guidance, forms and instructions.

* * * * *

(c) *Cross-references.* For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see § 31.6302–1(h) of this chapter.

(d) *Effective/applicability date.* This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 6. Section 1.6302–4 is revised to read as follows:

§ 1.6302–4 Voluntary payments by electronic funds transfer.

(a) *Electronic funds transfer.* Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle A of the Internal Revenue Code, including any payment of estimated tax. Such payment must be made in accordance with procedures prescribed by the Commissioner.

(b) *Effective/applicability date.* This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 7. The authority citation for part 31 is amended by removing the entries for §§ 31.6302–1 through 31.6302–3, 31.6302–4, and 31.6302(c)-2A and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.6302–1 also issued under 26 U.S.C. 6302(a) and (h).

Section 31.6302–1T also issued under 26 U.S.C. 6302(a).

Section 31.6302–2, 31.6302–3, and 31.6302–4 also issued under 26 U.S.C. 6302(a) and (h).

Section 31.6302(c)–2A also issued under 26 U.S.C. 6157(d) and 6302(a) and (h).

Section 31.6302(c)–3 also issued under 26 U.S.C. 6302(a) and (h). * * *

§ 31.6302–0 [Amended]

Par. 8. Section 31.6302–0 is amended by removing the entries for § 31.6302–1T.

Par. 9. Section 31.6302–1 is amended by:

1. Revising the heading.
2. Revising paragraphs (c)(1), (c)(2), (c)(3), and (c)(4).
3. Revising paragraph (d) *Example 1*, *Example 2*, *Example 3*, *Example 4*, and *Example 5*.
4. Revising paragraph (h)(2)(ii).
5. Redesignating paragraph (h)(2)(iii) as paragraph (h)(2)(iv) and revising newly-designated paragraph (h)(2)(iv).
6. Adding new paragraph (h)(2)(iii).
7. Revising paragraph (i)(1) and (i)(3).
8. Removing paragraphs (i)(4), (i)(5) and (i)(6).
9. Adding paragraph (o).

The revisions and additions read as follows:

§ 31.6302–1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

* * * * *

(c) *Deposit rules*—(1) *Monthly rule.* An employer that is a monthly depositor must deposit employment taxes accumulated with respect to payments made during a calendar month by electronic funds transfer by the 15th day of the following month. If the 15th day of the following month is a Saturday, Sunday, or legal holiday, taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday under section 7503.

(2) *Semi-Weekly rule*—(i) *In general.* An employer that is a semi-weekly depositor for a calendar year must deposit employment taxes by electronic funds transfer by the dates set forth below:

Payment dates/semi-weekly periods	Deposit date
(A) Wednesday, Thursday and/or Friday.	On or before the following Wednesday.
(B) Saturday, Sunday, Monday and/or Tuesday.	On or before the following Friday.

(ii) *Semi-weekly period spanning two return periods.* If the return period ends during a semi-weekly period in which an employer has two or more payment dates, two deposit obligations may exist. For example, if one quarterly return period ends on Thursday and a new quarterly return period begins on Friday, employment taxes from payments on Wednesday and Thursday are subject to one deposit obligation, and taxes from payments on Friday are subject to a separate deposit obligation. Two separate federal tax deposits are required.

(iii) *Special rule for computing days.* Semi-weekly depositors have at least three business days following the close of the semi-weekly period by which to deposit employment taxes accumulated during the semi-weekly period. Business days include every calendar day other than Saturdays, Sundays, or legal holidays under section 7503. If any of the three weekdays following the close of a semi-weekly period is a legal holiday under section 7503, the employer has an additional day for each day that is a legal holiday by which to make the required deposit. For example, if the Monday following the close of a Wednesday to Friday semi-weekly period is Memorial Day, a legal holiday, the required deposit for the semi-weekly period is not due until the following Thursday rather than the following Wednesday.

(3) *Exception—One-Day rule.* Notwithstanding paragraphs (c)(1) and (c)(2) of this section, if on any day within a deposit period (monthly or semi-weekly) an employer has accumulated $100,000 or more of employment taxes, those taxes must be deposited by electronic funds transfer in time to satisfy the tax obligation by the close of the next day. If the next day is a Saturday, Sunday, or legal holiday under section 7503, the taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of determining whether the $100,000 threshold is met—

(i) A monthly depositor takes into account only those employment taxes accumulated in the calendar month in which the day occurs; and

(ii) A semi-weekly depositor takes into account only those employment taxes accumulated in the Wednesday–Friday or Saturday–Tuesday semi-weekly period in which the day occurs.

(4) *Deposits required only on business days.* No taxes are required to be deposited under this section on any day that is a Saturday, Sunday, or legal holiday. Deposits are required only on business days. Business days include every calendar day other than Saturday, Sundays, or legal holidays. For purposes of this paragraph (c), legal holidays shall have the same meaning provided in section 7503.

* * * * *

(d) * * *

Example 1. Monthly depositor. (i) *Determination of status.* For calendar year 2011, Employer A determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters within this period, A reported aggregate employment tax liabilities of $42,000 on its quarterly Forms 941. Because the aggregate amount did not exceed $50,000, A is a monthly depositor for the entire calendar year 2011.

(ii) *Monthly rule.* During December 2011, A (a monthly depositor) accumulates $3,500 in employment taxes. A has a $3,500 deposit obligation that must be satisfied by the 15th day of the following month. Since January 15, 2012 is a Sunday, and January 16, 2012, Dr. Martin Luther King, Jr.'s Birthday, is a legal holiday, A's deposit obligation will be satisfied if the deposit is made by electronic funds transfer by the next business day, January 17, 2012.

Example 2. Semi-weekly depositor. (i) *Determination of status.* For the calendar year 2011, Employer B determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters within this period, B reported aggregate employment tax liabilities of $88,000 on its quarterly Forms 941. Because that amount exceeds $50,000, B is a semi-weekly depositor for the entire calendar year 2011.

(ii) *Semi-weekly rule.* On Friday, January 7, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates $4,000 in employment taxes. B has a $4,000 deposit obligation that must be satisfied on or before the following Wednesday, January 12, 2011.

(iii) *Deposit made within three business days.* On Friday, January 14, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates $4,200 in employment taxes. Generally, B would have a required deposit obligation of employment taxes that must be satisfied by the following Wednesday, January 19, 2011. Because Monday, January 17, 2011, is Dr. Martin Luther King, Jr.'s Birthday, a legal holiday, B has an additional day to make the required deposit. B has a $4,200 deposit obligation that must be satisfied on or before the following Thursday, January 20, 2011.

Example 3. One-Day rule. On Monday, January 10, 2011, Employer C accumulates $110,000 in employment taxes with respect

to wages paid on that date. C has a deposit obligation of $110,000 that must be satisfied by the next business day. If C was not subject to the semi-weekly rule on January 10, 2011, C becomes subject to that rule as of January 11, 2011. See paragraph (b)(2)(ii) of this section.

Example 4. One-Day rule in combination with subsequent deposit obligation. Employer D is subject to the semi-weekly rule for calendar year 2011. On Monday, January 10, 2011, D accumulates $115,000 in employment taxes. D has a deposit obligation that must be satisfied by the next business day. On Tuesday, January 11, D accumulates an additional $30,000 in employment taxes. Although D has a $115,000 deposit obligation incurred earlier in the semi-weekly period, D has an additional and separate deposit obligation of $30,000 on Tuesday that must be satisfied by the following Friday.

Example 5. [Reserved].

* * * * *

(h) * * *

(2) * * *

(ii) *Deposits for return periods beginning after December 31, 1999, and made before January 1, 2011.* Unless exempted under paragraph (h)(5) of this section, for deposits for return periods beginning after December 31, 1999, and made before January 1, 2011, a taxpayer that deposits more than $200,000 of taxes described in paragraph (h)(3) of this section during a calendar year beginning after December 31, 1997, must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes that are required to be made for return periods beginning after December 31 of the following year and must continue to deposit by electronic funds transfer in all succeeding years. As an example, a taxpayer that exceeds the $200,000 deposit threshold during calendar year 1998 is required to make deposits for return periods beginning in or after calendar year 2000 by electronic funds transfer.

(iii) *Deposits made after December 31, 2010.* Unless exempted under paragraph (h)(5) of this section, a taxpayer that has a required tax deposit obligation described in paragraph (h)(3) of this section must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes made after December 31, 2010.

(iv) *Voluntary deposits.* A taxpayer that is authorized to make payment of taxes with a return under regulations may voluntarily make a deposit by electronic funds transfer.

* * * * *

(i) *Time and manner of remittance with a return*—(1) *General rules.* A remittance required to be made by this section that is authorized to be made with a return under regulations and is made with a return must be made separately from a remittance required by any other section. Further, a remittance for a deposit period in one return period must be made separately from a remittance for a deposit period in another return period.

* * * * *

(3) *Time deemed paid.* In general, amounts remitted with a return under this section will be considered as paid on the date payment is received by the Internal Revenue Service at the place prescribed for filing by regulations or forms and instructions (or if section 7502(a) applies, by the date the payment is treated as received under section 7502(a)), or on the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), whichever is later. In the case of the taxes imposed by chapter 21 and 24 of the Internal Revenue Code, solely for purposes of section 6511 and the regulations thereunder (relating to the period of limitation on credit or refund), if an amount is remitted with a return under this section prior to April 15th of the calendar year immediately succeeding the calendar year that contains the period for which the amount was remitted, the amount will be considered paid on April 15th of the succeeding calendar year.

* * * * *

(o) *Effective/applicability date.* Paragraphs (c), (d) Examples 1 through 5, (h)(2)(ii), (h)(2)(iii), (h)(2)(iv),(i)(1) and (i)(3) of this section apply to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 10. Section 31.6302–1T is amended by:

1. Revising paragraph (g)(1).
2. Revising paragraph (n)(1).

The revisions read as follows.

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

* * * * *

(g) *Agricultural employers—Special rules*—(1) *In general.* An agricultural employer reports wages paid to farm workers annually on Form 943 (Employer's Annual Tax Return for Agricultural Employees) and reports wages paid to nonfarm workers quarterly on Form 941 or annually on Form 944. Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 ("Form 943 taxes") separately from employment taxes reportable on Form 941 or Form 944 ("Form 941 or Form 944 taxes"). Form 943 taxes and Form 941 or Form 944 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of § 31.6302–1(c)(3) applies, or whether any safe harbor is applicable. In addition, Form 943 taxes and Form 941 or Form 944 taxes must be deposited separately. (See § 31.6302–1(b) for rules for determining an agricultural employer's deposit status for Form 941 taxes.) Whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is determined according to the rules of this paragraph (g).

* * * * *

(n) *Effective/applicability dates*—(1) *In general.* Sections 31.6302–1 through 31.6302–3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§ 31.6302–1 through 31.6302–3 are inconsistent with the provisions of §§ 31.6302(c)–1 and 31.6302(c)–2, a taxpayer will be considered to be in compliance with §§ 31.6301–1 through 31.6302–3 if the taxpayer makes timely deposits during 1993 in accordance with §§ 31.6302(c)–1 and 31.6302(c)–2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3*, and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6302–1 in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006, and before December 30, 2008, are contained in § 31.6302–1T in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in § 31.6302–1 in effect prior to January 1, 2006. The rules of paragraph (g) eliminating use of Federal tax deposit coupons apply to deposits and payments made after the date that final regulations are published in the **Federal Register,** but no earlier than January 1, 2011.

* * * * *

Par. 11. Section 31.6302–2 is amended by:

1. Revising the heading.
2. Revising paragraph (d).

The revisions read as follows.

§ 31.6302–2 Deposit rules for taxes under the Railroad Retirement Tax Act (RRTA).

* * * * *

(d) *Effective/applicability date.* This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 12. Section 31.6302–4 is amended by:

1. Revising the heading.
2. Revising paragraph (d).
3. Adding paragraph (e).

The revisions and additions read as follows:

§ 31.6302–4 Deposit rules for withheld income taxes attributable to nonpayroll payments.

* * * * *

(d) *Special rules.* A taxpayer must treat nonpayroll withheld taxes, which are reported on Form 945, "Annual Return of Withheld Federal Income Tax," separately from taxes reportable on Form 941, "Employer's QUARTERLY Federal Tax Return" (or any other return, for example, Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees"). Taxes reported on Form 945 and taxes reported on Form 941 are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of § 31.6302–1(c)(3) applies, or whether any safe harbor is applicable. In addition, taxes reported on Form 945 and taxes reported on Form 941 must be deposited separately. (See paragraph (b) of § 31.6302–1 for rules for determining an employer's deposit status for taxes reported on Form 941.) Taxes reported on Form 945 for one calendar year must be deposited separately from taxes reported on Form 945 for another calendar year.

(e) *Effective/applicability date.* Section 31.6302–4(d) applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

§ 31.6302(c)–2A [Removed]

Par. 13. Section 31.6302(c)–2A is removed.

Par. 14. Section 31.6302(c)–3 is amended by:

1. Revising the heading.
2. Revising paragraph (a)(1), introductory text.
3. Revising paragraph (a)(1)(i).
4. Revising paragraph (a)(1)(ii), introductory text.
5. Removing paragraph (a)(3).
6. Revising paragraph (b).
7. Revising paragraph (c).
8. Removing paragraph (d).

The revisions read as follows:

§ 31.6302(c)–3 Deposit rules for taxes under the Federal Unemployment Tax Act.

(a) *Requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, every person that, by reason of the provisions of section 6157, computes the tax imposed by section 3301 on a quarterly or other time period basis shall—

(i) If the person is described in section (a)(1) of section 6157, deposit the amount of such tax by the last day of the first calendar month following the close of each of the first three calendar quarters in the calendar year; or

(ii) If the person is other than a person described in section (a)(1) of section 6157, deposit the amount of such tax by the last day of the first calendar month following the close of—

* * * * *

(b) *Manner of deposit*—(1) *In general.* A deposit required to be made by an employer under this section shall be made separately from a deposit required by any other section. An employer may make one, or more than one, remittance of the amount required to be deposited. An employer that is not required to deposit an amount of tax by this section may nevertheless voluntarily make that deposit. For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see § 31.6302–1(h).

(2) *Time deemed paid.* For the time an amount deposited by electronic funds transfer is deemed paid, see § 31.6302–1(h)(9). For the time an amount remitted with a return is deemed paid, see § 31.6302–1(i)(3).

(c) *Effective/applicability date.* This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Par. 15. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 16. Section 40.6302(c)–1 is amended by:

1. Revising the heading.
2. In paragraph (b)(2)(v), removing the language "that failure may be reported to the appropriate IRS office and".
3. Revising paragraphs (d) and (f).

The revisions read as follows:

§ 40.6302(c)–1 Deposits.

* * * * *

(d) *Deposits required by electronic funds transfer.* All deposits required by this part must be made by *electronic funds transfer,* as that term is defined in § 31.6302–1(h)(4) of this chapter.

* * * * *

(f) *Effective/applicability date.* This section applies to deposits made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

* * * * *

§ 40.6302(c)–2 [Amended]

Par. 17. Section 40.6302(c)–2, paragraph (c), is amended by removing the language "2001" and adding "2001, except that paragraph (b) of this section does not apply on and after the date described in § 40.6302(c)–1(f)" in its place.

Par. 18. Section 40.6302(c)–3 is amended as follows:

1. The heading is revised to read as set forth below.
2. In paragraph (c), the language "banking" is removed in both places it appears and "business" is added in its place.
3. In paragraph (g), the language "2004" is removed and "2004, except that paragraph (f)(5) of this section does not apply on and after the date described in § 40.6302(c)–1(f)" is added in its place.

§ 40.6302(c)–3 Special rules for deposits under chapter 33.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 19. The authority citation for part 301 is amended to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 20. Section 301.6302–1 is revised to read as follows:

§ 301.6302–1 Manner or time of collection of taxes.

(a) *Employment and excise taxes.* For provisions relating to the manner or time of collection of certain employment and excise taxes and deposits in connection with the payment thereof, see the regulations relating to the particular tax.

(b) *Income taxes.* (1) For provisions relating to the deposits of income and estimated income taxes of certain corporations, see § 1.6302–1 of this chapter (Income Tax Regulations).

(2) For provisions relating to the deposits of tax required to be withheld under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see § 1.6302–2 of this chapter.

(c) *Effective/applicability date.* This section applies to payments made after

the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 21. Section 301.6656–1 is amended by:

1. Revising paragraph (b).
2. Revising paragraph (c).

The revisions read as follows:

§ 301.6656–1 Abatement of penalty.

* * * * *

(b) *Deposit sent to Secretary.* The Secretary may abate the penalty imposed by section 6656(a) if the first time a depositor is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary rather than deposited by electronic funds transfer.

(c) *Effective/applicability date.* This section applies to deposits made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

§ 301.7502–2 [Removed]

Par. 22. Section 301.7502–2 is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–20737 Filed 8–19–10; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG–138637–07]

RIN 1545–BH01

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: This document contains proposed modifications revising the regulations governing practice before the Internal Revenue Service (IRS). The proposed regulations affect individuals who practice before the IRS and providers of continuing education programs. The proposed regulations modify the general standards of practice before the IRS and the standards with respect to tax returns. This document also provides notice of a public hearing on these proposed regulations and withdraws the notice of proposed rulemaking published on September 26, 2007.

DATES: Written or electronic comments must be received by October 7, 2010. Outlines of topics to be discussed at the public hearing scheduled for Friday, October 8, 2010 at 10 am must be received by Monday, September 27, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–138637–07), Room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–138637–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–138637–07). The public hearing will be held in IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Matthew D. Lucey or Matthew S. Cooper at (202) 622–4940; concerning submissions of comments, the public hearing, and/or to be placed on the building access list to attend the public hearing, Regina Johnson of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these proposed regulations was previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1726. Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 22, 2010. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proper collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §§ 10.6 and 10.9. The total annual burden of this collection of information is an increase from the burden in the current regulations.

Section 10.6 requires a registered tax return preparer to maintain records and educational materials regarding the completion of the required qualifying continuing education credits. Section 10.9 also requires providers of qualifying continuing education programs to maintain records and educational material concerning these programs and the individuals who attend them. Continuing education providers also obtain approval of each program as a qualified continuing education program. The collection of this material helps to ensure that individuals authorized to prepare tax returns are informed of the latest developments in Federal tax practice.

Currently, there are approximately 46,000 enrolled agents and 300 enrolled retirement plan agents who are required to maintain records and educational materials regarding the completion of the required continuing education credits. There are approximately 350 continuing education providers of qualifying continuing education programs required to maintain records and educational material concerning these programs and the individuals who attend them. It is expected that there will be an additional 600,000 registered tax return preparers and 1,900 continuing education providers who will be affected by the collection of information requirements in these proposed regulations. The IRS and the Treasury Department estimate that the total annual costs resulting from these requirements will be $9,880,000 for all affected practitioners and $38,632,500 for all affected continuing education providers.

This collection of information is mandatory. The likely respondents and record keepers are individuals and businesses.

Estimated total annual recordkeeping and reporting burden is 1,710,000 hours.

Estimated annual burden per practitioner varies from 30 minutes to one hour, depending on individual circumstances, with an estimated average of 54 minutes.

Estimated annual burden per continuing education provider varies from five hours to 5,000 hours, depending on individual circumstances, with an estimated average of 500 hours.

Estimated number of affected practitioners is 650,000.

Estimated number of affected continuing education providers is 2,250.

Estimated annual frequency of responses is on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law.

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury (the Secretary) to regulate the practice of representatives before the Treasury Department. The Secretary is authorized, after notice and an opportunity for a proceeding, to censure, suspend, or disbar from practice before the Treasury Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330 of title 31. The Secretary also is authorized to impose a monetary penalty against these individuals and the individuals' firms or other entities that employ them. Additionally, the Secretary may seek an injunction against these individuals under section 7408 of the Internal Revenue Code (Code).

The Secretary has published regulations governing the practice of representatives before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). These regulations authorize the Director of the Office of Professional Responsibility (OPR) to act upon applications for enrollment to practice before the IRS, to make inquiries with respect to matters under OPR's jurisdiction, to institute proceedings to impose a monetary penalty or to censure, suspend, or disbar a practitioner from practice before the IRS, to institute proceedings to disqualify appraisers, and to perform other duties necessary to carry out these functions.

Circular 230 has been amended periodically. The regulations were amended most recently on September 26, 2007 (72 FR 54540), to modify various provisions relating to the general standards of practice. For example, the 2007 regulations established an enrolled retirement plan agent designation, modified the conflict of interest rules, limited the use of contingent fees by practitioners, and required public disclosure of OPR disciplinary decisions after the decisions become final.

Those final regulations, however, did not finalize the standards with respect to tax returns under § 10.34(a) and the definitions under § 10.34(e) because of the amendments to section 6694(a) of the Code made by the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28, 121 Stat. 190. Rather, the IRS and the Treasury Department reserved § 10.34(a) and (e) in those final regulations and also simultaneously issued a notice of proposed rulemaking (REG–138637–07) in the **Federal Register** (72 FR 54621) proposing to conform the professional standards under § 10.34 of Circular 230 with the civil penalty standards under section 6694(a) as amended by the 2007 Act.

On October 3, 2008, the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C. of Public Law 110–343, 122 Stat. 3765, again amended the standard of conduct that must be met to avoid imposition of the tax return preparer penalty under section 6694(a). The IRS and the Treasury Department published final regulations (TD 9436) in the **Federal Register** (73 FR 78430) implementing amendments to the tax return preparer penalties on December 22, 2008. This document proposes modifications to the standards with respect to tax returns and also withdraws the proposed amendments to § 10.34 published in the **Federal Register** on September 26, 2007.

The proposed regulations also provide new rules governing the oversight of tax return preparers. Currently, an individual tax return preparer generally is not subject to the provisions in Circular 230 unless the tax return preparer is an attorney, certified public accountant, enrolled agent, or other type of practitioner identified in Circular 230. Under current law, any individual may prepare tax returns and claims for refund without meeting any qualifications or competency standards. A tax return preparer also may exercise the privilege of limited practice before the IRS pursuant to the rules in § 10.7(c)(1)(viii) of Circular 230 and Revenue Procedure 81–38 (1981–2 CB 592). *See* § 601.601(d)(2)(ii)(*b*).

In June 2009, the IRS launched a review of tax return preparers with the intent to propose a comprehensive set of recommendations to ensure uniform and high ethical standards of conduct for all tax return preparers and to increase taxpayer compliance. As part of this effort, the IRS received input from a large and diverse community through numerous channels, including public forums, solicitation of written comments, and meetings with advisory groups.

The IRS made findings and recommendations in Publication 4832, "Return Preparer Review" (the Report), which was published on January 4, 2010. The Report recommends increased oversight of the tax return preparer industry through the issuance of regulations.

This document proposes amendments to Circular 230 based upon certain of the recommendations in the Report. Specifically, the proposed regulations establish "registered tax return preparers," as a new class of practitioners. Sections 10.3 through 10.6 of the proposed regulations describe the process for becoming a registered tax return preparer and the limitations on a registered tax return preparer's practice before the IRS. In general, practice by registered tax return preparers is limited to preparing tax returns, claims for refund, and other documents for submission to the IRS. A registered tax return preparer may prepare all or substantially all of a tax return or claim for refund, and sign a tax return or claim for refund, commensurate with the registered tax return preparer's level of competence as demonstrated by written examination. The proposed regulations also revise § 10.30 regarding solicitation, § 10.36 regarding procedures to ensure compliance, and § 10.51 regarding incompetence and disreputable conduct.

Proposed regulations under section 6109 of the Code (REG–134235–08) published in the **Federal Register** (75 FR 14539) on March 26, 2010, also implement certain recommendations in the Report. The proposed regulations under section 6109 provide that, for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's preparer tax identification number (PTIN) or such other number prescribed by the IRS in forms, instructions, or other appropriate guidance. The proposed regulations under section 6109 provide that the IRS is authorized to require through other guidance (as well as in forms and

instructions) that tax return preparers apply for a PTIN or other prescribed identifying number, the regular renewal of PTINs or other prescribed identifying number, and the payment of user fees.

Explanation of Provisions

The scope of these proposed regulations is limited to practice before the IRS. The Director of OPR has general oversight responsibilities for the rules in these proposed regulations, but specific duties related to the administration of certain procedural aspects of these rules (for example, test administration, issuance of enrollment or registration certificates or cards) may be delegated to employees of other IRS functions or third party vendors if the Commissioner determines that the performance of these duties by these organizations will aid tax administration. These proposed regulations do not change the existing authority of attorneys, certified public accountants, and enrolled agents to practice before the IRS under Circular 230. These proposed regulations also do not alter or supplant ethical standards that might otherwise be applicable to practitioners.

Definitions—Practice Before the Internal Revenue Service and Tax Return Preparer

"Practice before the Internal Revenue Service" under § 10.2(a)(4) comprehends all matters connected with a presentation to the IRS or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS. Under the current definition of practice, preparing a tax return or claim for refund (even if the tax return or claim for refund is filed by another person) is practice before the IRS. Similarly, an individual who files a tax return or claim for refund prepared by someone else also is engaged in practice before the IRS. The IRS and the Treasury Department are aware that some tax professionals have suggested that they are not engaged in practice before the IRS unless they both prepare and file a tax return, claim for refund, or other document. Accordingly, § 10.2(a)(4) of the proposed regulations is revised to eliminate this misunderstanding, and specifically clarifies that either preparing a document or filing a document may constitute practice before the IRS. Section 10.2(a)(8) of the proposed regulations also clarifies that the definition of "tax return preparer" in Circular 230 is the same as the meaning in section 7701(a)(36) of the Code and 26 CFR 301.7701–15.

Who May Practice

Section 10.3(f) of the proposed regulations establishes a new "registered tax return preparer" designation. A registered tax return preparer is any individual so designated under § 10.4(c) who is not currently under suspension or disbarment from practice before the IRS. An individual who is a registered tax return preparer pursuant to this part is a practitioner authorized to practice before the IRS, subject to the limitations identified in these proposed regulations.

These proposed regulations generally limit practice as a registered tax return preparer to preparing tax returns, claims for refund, and other documents for submission to the IRS. Pursuant to § 10.3(f)(2) of these proposed regulations, a registered tax return preparer may only prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund that is commensurate with the level of competence that the registered tax return preparer has demonstrated by written examination. Registered tax return preparers also are permitted to sign tax returns, claims for refund, and other documents as the preparer provided the document is commensurate with the level of competence demonstrated, and may represent taxpayers before revenue agents, customer service representatives or similar officers and employees of the IRS (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer signed the tax return or claim for refund for the taxable year or period under examination. Consistent with the limited practice rights currently available to unenrolled return preparers under § 10.7(c)(1)(viii), registered tax return preparers are not permitted to represent taxpayers, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees of the IRS or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the IRS.

The conduct of the registered tax return preparer in connection with the preparation of the return, claim for refund, or other document, as well as any representation of the client during an examination, will be subject to the standards of conduct in Circular 230. Inquiries into possible misconduct and disciplinary proceedings relating to registered tax return preparer misconduct will be conducted under the provisions in Circular 230.

Eligibility To Become a Registered Tax Return Preparer

An individual must pass a minimum competency examination and possess a current or otherwise valid PTIN or other prescribed identifying number to become a registered tax return preparer. The examination will be administered by, or administered under the oversight of, the IRS, similar to the special enrollment examinations for enrolled agents and enrolled retirement plan agents. After completing competency testing, tax return preparers will be subject to suitability checks to determine whether the tax return preparer has engaged in disreputable conduct which, at the time the application is filed with OPR, could result in suspension or disbarment under Circular 230. An individual who has engaged in disreputable conduct is not eligible to become a registered tax return preparer.

Consistent with the recommendations made in the Report, these proposed regulations do not exempt a tax return preparer from the competency testing requirements based upon the individual's past tax return preparation experience. Initially, the IRS will offer two competency examinations. One examination will cover wage and nonbusiness income Form 1040 series returns, while another examination will cover wage and small business income Form 1040 series returns. An individual must successfully complete an examination prior to becoming a registered tax return preparer and obtaining a PTIN. The IRS will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund, including the schedules and forms, that a registered tax return preparer may prepare based upon the written examination successfully completed under § 10.4(c). The registered tax return preparer who passes the wage and small business income Form 1040 series examination, however, will be able to prepare any Form 1040 series returns. The IRS and the Treasury Department request comments on whether a tax return preparer who solely prepares tax returns other than Form 1040 series returns (for example, Form 941, Employer's QUARTERLY Federal Tax Return, or Form 706, U.S. Estate Tax Return) should be permitted to prepare these other tax returns without successfully completing any examination.

It is currently anticipated that the examination to become a registered tax

return preparer will not be available until after the effective date of these regulations. The IRS and the Treasury Department will provide published guidance establishing transition rules that explain the steps individuals must take to prepare all or substantially all of a tax return or claim for refund while awaiting full implementation of the examination process.

Application and Renewal Procedures

Section 10.5 of the regulations sets forth the applicable procedures relating to the application to become a registered tax return preparer, which generally are consistent with the procedures currently utilized for enrolled agents and enrolled retirement plan agents. The proposed regulations provide that applicants must utilize forms and comply with the procedures established and published by the IRS. The proposed regulations permit the IRS to change the procedures to apply to become a registered tax return preparer.

As a condition for consideration of an application, the IRS may conduct a Federal tax compliance check and suitability check. The tax compliance check will be limited to an inquiry regarding whether an applicant has filed all required individual or business tax returns (such as employment tax returns that might have been required to be filed by the applicant) and whether the applicant has failed to pay, or make proper arrangement with the IRS for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether an applicant has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part, including whether the applicant has engaged in disreputable conduct.

The IRS may deny an application only if the results of the tax compliance or suitability check are sufficient to establish that the practitioner engaged in conduct subject to sanctions under Circular 230 at the time the application is filed or the applicant does not pass the required competency examination. If the applicant does not pass the competency examination or the tax compliance or suitability check, the applicant will not be issued an enrollment or registration card or certificate, and will be provided information regarding the denial of the application and the rules on appealing the denial. An applicant who is initially denied enrollment or registration for failure to pass a tax compliance check may reapply after the initial denial if the applicant becomes current with respect to the applicant's tax liabilities.

Once an application to become a registered tax return preparer is approved, the IRS will issue a registration card or certificate to each individual and each card or certificate will be valid for the period stated on the card or certificate. The card or certificate will be in addition to any certificate that may be issued to an attorney, certified public accountant, enrolled agent, or registered tax return preparer who obtains a PTIN. Registered tax return preparers must have both a current and valid registration card or certificate and a current and valid PTIN certificate to practice before the IRS.

Section 10.6 of the proposed regulations sets forth the procedures for renewal of application to practice before the IRS as a registered tax return preparer. A registered tax return preparer must apply for renewal as prescribed in forms, instructions, or other appropriate guidance. A condition of renewal, as recommended in the Report, is the completion of continuing education requirements by registered tax return preparers. A registered tax return preparer must complete 15 hours of continuing education during each registration year, with a minimum of three hours of Federal tax law updates, two hours of tax-related ethics and 10 hours of Federal tax law topics. The registration year is defined as each 12-month period that the registered tax return preparer is authorized to practice before the IRS. Registered tax return preparers will be required to maintain records with respect to the completion of the continuing education credit hours and to self-certify the completion of the continuing education credit at the time of renewal. The proposed regulations require that a qualifying continuing education course enhance professional knowledge in Federal taxation or Federal tax related matters and be consistent with the Code and effective tax administration.

Section 10.6(f)(2)(iii) and (f)(2)(iv) of the current regulations authorizes continuing education credit to be awarded for hours relating to work as an instructor, discussion leader, or speaker at an education program, as well as hours for authoring articles, books, or other publications on Federal taxation or Federal tax-related matters. The maximum credit for instruction and preparation currently may not exceed 50 percent of the continuing education requirement for an enrollment cycle. After further consideration, the IRS and the Treasury Department believe that the maximum credit for instruction and preparation should be reduced to encourage a more diverse educational program. These proposed regulations, therefore, reduce the maximum credit for instruction and preparation to four hours annually of the continuing education requirement. These proposed regulations also remove the ability to receive hours for authoring articles, books, or other publications.

Section 10.5(b) and § 10.6(d)(6) of the proposed regulations are revised to reflect that the IRS will charge a reasonable nonrefundable fee for each initial application and application for renewal as a registered tax return preparer filed with OPR. Separate regulation projects under 26 CFR part 300 will provide further details on the amounts of those user fees in the near future.

Continuing Education Providers

The rules regarding continuing education providers that currently are in § 10.6 of Circular 230 are moved to new § 10.9. Under § 10.9 of the proposed regulations, providers of continuing education courses are required to maintain records and educational material concerning these programs and the individuals who attend them, as well as obtain approval of each program to be qualified as a qualified continuing education program. Section 10.9(a)(6) also states that the IRS may charge a reasonable nonrefundable fee for each application for qualification as a qualified continuing education program. A separate regulation project under 26 CFR part 300 will provide further details on the amounts of the user fee in the near future.

Limited Practice Before the IRS, Return Preparation, and Application to Other Individuals

Section 10.7(c)(1)(viii) currently authorizes an individual, who is not otherwise a practitioner, to represent a taxpayer during an examination if that individual prepared the return for the taxable period under examination. The proposed regulations remove this limited practice authorization from § 10.7(c) because of the addition to § 10.3(f) regarding registered tax return preparers. Additionally, these proposed regulations remove current § 10.8 regarding customhouse brokers from Circular 230 and move the language in current § 10.7(e) to new § 10.8(a). Section 10.8(a) of the proposed regulations provides that any individual, whether or not the individual is a practitioner, may assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund). This revision is consistent with the inclusion of

registered tax return preparers as practitioners authorized to practice before the IRS and the practice rights available to these practitioners.

These proposed regulations also establish a new § 10.8(b) regarding other individuals. Any individual who prepares for compensation all or a substantial portion of a document pertaining to a taxpayer's tax liability for submission to the IRS is subject to the duties and restrictions relating to practice before the IRS and may be sanctioned, after notice and opportunity for a conference, for any conduct that would justify a sanction under § 10.50. An individual described in 26 CFR 301.7701–15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance. For example, an individual who only furnishes typing, reproducing, or other mechanical assistance with respect to a document is not subject to the duties and restrictions relating to practice before the IRS. Only an attorney, certified public accountant, enrolled agent, or registered tax return preparer may prepare for compensation all or substantially all of a tax return or claim for refund, or sign as a preparer tax returns and claims for refund.

An individual who is not an attorney, certified public accountant, enrolled agent, or registered tax return preparer who nevertheless prepares for compensation all or a substantial portion of a document (including tax returns and claims for refund) for submission to the IRS is engaged in practice before the IRS, and subject to the rules and standards of Circular 230.

Solicitation

Section 10.30(a)(1) of these proposed regulations provides that a practitioner may not, with respect to any IRS matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, coercive, misleading, or deceptive statement or claim. In describing their professional designation, registered tax return preparers may not utilize the term "certified" or imply an employer/employee relationship with the IRS. An example of an acceptable description for registered tax return preparers under § 10.4(c), in describing their professional designation, is "designated as a registered tax return preparer with the Internal Revenue Service."

Standards With Respect to Tax Returns and Documents, Affidavits and Other Papers

After careful consideration, the IRS and the Treasury Department continue to conclude that the professional standards in § 10.34(a) generally should be consistent with the civil penalty standards in section 6694 for tax return preparers. As discussed in this preamble, the limited differences between the proposed standards in § 10.34 and section 6694 arise from the different purposes served by those provisions and the different manner in which the two standards will be administered.

The standards with respect to tax returns in § 10.34(a) are being reproposed to provide broader guidelines that are more appropriate for professional ethics standards. Under § 10.34(a)(1)(i) of these proposed regulations, a practitioner may not willfully, recklessly, or through gross incompetence, sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that: (A) Lacks a reasonable basis; (B) is an unreasonable position as described in section 6694(a)(2) (including the related regulations and other published guidance); or (C) is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) (including the related regulations and other published guidance).

Under § 10.34(a)(1)(ii) of these proposed regulations, a practitioner may not willfully, recklessly, or through gross incompetence, advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that: (A) Lacks a reasonable basis; (B) is an unreasonable position as described in section 6694(a)(2) (including the related regulations and other published guidance); or (C) is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) (including the related regulations and other published guidance).

These proposed ethical guidelines under § 10.34 closely mirror the civil penalty standards in section 6694 with only a few minor differences. First, these proposed regulations specifically provide that a position on a return or claim for refund must always meet the minimum threshold standard of reasonable basis. Because Circular 230 establishes minimum standards for practitioners, these proposed regulations provide that a practitioner acts unethically when the practitioner advises a taxpayer to take a return position that lacks a reasonable basis. The proposed regulations do not provide an exception to § 10.34(a) merely because there is a final determination that no understatement of liability for tax exists. This differs from section 6694(d), which provides that the IRS must abate (or refund) a preparer penalty any time there is a final administrative determination or a final judicial decision that there was no understatement of liability by the taxpayer. A practitioner, therefore, may still be subject to discipline under § 10.34(a) for a position on a tax return or claim for refund even if other positions on the same tax return or claim for refund eliminate the understatement of liability.

Second, these proposed regulations provide that a practitioner is subject to discipline under § 10.34(a) only after willful, reckless, or grossly incompetent conduct. Under section 6694, a single, unintentional error that is not willful, reckless, or grossly incompetent may result in a section 6694(a) penalty. Similarly, a return preparer may claim a reasonable cause defense to the imposition of penalties under section 6694, while Circular 230 does not provide such a defense but rather relies on the requirement that a practitioner must have acted willfully, recklessly, or through gross incompetence to ensure that sanctions are not imposed on a practitioner who acts reasonably and in good faith. If the IRS imposes a penalty against a practitioner under section 6694 and also refers the practitioner for possible discipline under Circular 230, OPR will make an independent determination as to whether the practitioner engaged in willful, reckless, or grossly incompetent conduct subject to discipline under § 10.34(a) before any disciplinary proceedings are instituted or any sanctions are imposed. Thus, a practitioner liable for a penalty under section 6694 is not automatically subject to discipline under § 10.34(a).

Third, multiple practitioners from the same firm may be disciplined if their conduct in connection with the same act(s) does not comply with the standard of conduct required under § 10.34. Under the provisions in the regulations under section 6694, only one person within a firm is subject to the penalty under section 6694. The provisions of section 6694 prevent unwarranted duplication of civil penalties, but in the Circular 230 context, it may be critical that each practitioner engaged in misconduct be subject to appropriate sanctions.

Finally, § 10.34(a)(2) of these proposed regulations expressly provides that a pattern of conduct is a factor that will be taken into account in

determining whether a practitioner acted willfully, recklessly, or through gross incompetence for purposes of § 10.34. This differs from section 6694, which imposes a penalty based upon a single act in violation of the applicable provisions.

With these revisions, the definitions previously proposed under § 10.34(e) are withdrawn because the well-established definitions under the section 6662 and section 6694 penalty regulations and other published guidance will control for purposes of § 10.34.

Procedures To Ensure Compliance

Section 10.36 currently provides procedures to ensure that tax practitioners with responsibility for overseeing a firm's practice before the IRS take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with § 10.35 regarding covered opinions. The procedures to ensure compliance have produced great successes in encouraging firms to self-regulate, while at the same time doing so in a flexible way that is not a rigid one-size-fits-all regulatory burden. Firm responsibility is a critical factor in ensuring high quality advice and representation for taxpayers. Accordingly, the IRS and the Treasury Department conclude that the procedures to ensure compliance should be expanded to include practice involving tax return preparation activities. Section 10.36 of the proposed regulations provides that firm management with principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds and other documents filed with the IRS must take reasonable steps to ensure that the firm has adequate procedures in effect for purposes of complying with Circular 230.

Incompetence and Disreputable Conduct

Section 10.51 of Circular 230 defines disreputable conduct for which a practitioner may be sanctioned. Section 6011(e)(3) of the Code, enacted by section 17 of the Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111–92 (123 Stat. 2984, 2996) (Nov. 6, 2009), requires certain specified tax return preparers to file individual income tax returns electronically. Because the IRS and the Treasury Department believe that the failure to comply with this requirement is disreputable conduct, these proposed regulations are amended to add a new paragraph in § 10.51 to address practitioners who fail to comply with this requirement. Under § 10.51(a)(16) of the proposed regulations, disreputable conduct includes willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws (unless the failure is due to reasonable cause and not due to willful neglect).

Under § 10.51(a)(17) of the proposed regulations, disreputable conduct also includes willfully preparing all or substantially all of, or signing as a compensated tax return preparer, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid PTIN or other prescribed identifying number. Section 10.51(a)(18) states that it is disreputable conduct for a practitioner to willfully represent a taxpayer before an officer or employee of the IRS unless the practitioner is authorized to do so pursuant to Circular 230. These changes are consistent with the other revisions in these proposed regulations and under section 6109.

Records

Under § 10.90 of the current regulations, OPR must maintain and may make available for public inspection in the time and manner prescribed by the Secretary a roster of enrolled agents, including those who are active, inactive, and sanctioned. These proposed regulations clarify that the roster requirements also pertain to registered tax return preparers and qualified continuing education programs.

Proposed Effective Date

These regulations are generally proposed to apply 60 days after the date that final regulations are published in the **Federal Register**.

Special Analyses

Executive Order 12866 requires certain regulatory assessments and procedures for a significant regulatory action, defined as adversely affecting in a material way the economy, a sector of the economy, productivity, competition, or jobs. This rule has been designated as significant and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866. The Regulatory Assessment prepared for this regulation is provided below under the heading "Regulatory Assessment under E.O. 12866."

It has been determined that an initial regulatory flexibility analysis is required for this notice of proposed rulemaking under 5 U.S.C. 603. This analysis is set forth later in this preamble under the heading "Initial Regulatory Flexibility Analysis."

Pursuant to section 7805(f) of the Internal Revenue Code (Code), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

A. Regulatory Assessment Under E.O. 12866

1. Description of Need for the Regulatory Action

Although the IRS has exercised its authority to regulate for attorneys, certified public accountants, and other specified tax professionals, regulations under Circular 230 currently do not apply to a critical group of tax professionals: tax return preparers. As discussed in the Report, taxpayers' reliance on tax return preparers has grown steadily in recent decades. The number of taxpayers who prepared their own tax returns without assistance fell by more than two-thirds between 1993 and 2005. In fact, today, tax return preparers assist a majority of U.S. taxpayers in meeting their Federal tax filing obligations. In 2008 and 2009, for example, tax return preparers prepared almost 60 percent of all federal tax returns filed, including approximately 87 million federal individual income tax returns. The IRS expects these numbers to increase in 2010 and the coming years.

Tax return preparers are not only responsible for assisting taxpayers in filing complete, timely, and accurate returns, but also help educate taxpayers about the tax laws, and facilitate electronic filing. Tax return preparers provide advice to taxpayers, identify items or issues for which the law or guidance is unclear, and inform taxpayers of the benefits and risks of positions taken on a tax return, and the tax treatment or reporting of items and transactions. The IRS and the Treasury Department recognize that the majority of tax return preparers serve the interests of their clients and the tax system by preparing complete and accurate returns.

The tax system is best served by tax return preparers who are ethical, provide good service, and are qualified. Recent government studies, including studies from the Government Accountability Office and the Treasury Inspector General for Tax Administration, *see, e.g.*, Government Accountability Office, *Paid Tax Return Preparers: In a limited Study, Chain*

Preparers Made Serious Errors, GAO–06–563T (Apr. 4, 2006); Treasury Inspector General for Tax Administration, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors,* Rept. # 2008–40–171 (Sept. 3, 2008), illustrate the losses incurred by both taxpayers and the system of Federal tax administration when tax return preparers fail to properly prepare tax returns. Additionally, many of the more than 500 public comments received by the IRS during the agency's review of the return preparer industry expressed concern for taxpayers, tax administration and the return preparer industry, all of whom are hurt when tax returns are not accurately prepared.

An overwhelming number of commentators (98 percent of the persons who offered comments on oversight and enforcement) supported increased government oversight of tax return preparers, particularly for individuals who are not attorneys, certified public accountants or others currently authorized to practice before the IRS. These commentators argued that taxpayers, the IRS and tax administration generally would benefit from the registration of tax return preparers. Eighty-eight percent of the persons who expressed an opinion on registering paid tax return preparers favor registration. Ninety percent of the persons who commented on testing and education favor minimum education or testing requirements for paid tax return preparers. And 98 percent of the persons who commented on quality and ethics favor establishment of quality and ethics standards for paid tax return preparers.

Because the IRS has not adopted a uniform set of regulations for tax return preparers, the amount of oversight of tax return professionals varies greatly depending on professional affiliations and the geographic area in which they practice. Most tax return preparers do not have to pass any government or professionally mandated competency requirement. Most tax return preparers are not required to participate in a specified program of continuing professional education. And the ethical rules found in Circular 230 currently are not applicable to all tax return preparers.

As such, the IRS recognizes the need to apply a uniform set of rules to offer taxpayers some assurance that their tax returns are prepared completely and accurately. Increasing the completeness and accuracy of returns would necessarily lead to increase compliance with tax obligations by taxpayers.

2. Potentially Affected Tax Returns

These proposed regulations generally extend current regulations that apply to attorneys, certified public accountants and other specified tax professionals to all tax return preparers, including currently unenrolled tax return preparers, who prepare all or substantially all of a tax return or claim for refund for compensation. The rules apply to all returns prepared by tax return preparers regardless of the taxpayer. The rule is not limited by the type of return or claim for refund. For example, the rule applies to self-employed tax return preparers who prepare primarily individual tax returns for persons who have only wage and interest income. The rule also applies to tax return preparers employed by large accounting firms who prepare primarily corporate and large partnership returns. It also applies to those tax returns preparers who prepare only estate or excise tax returns. These examples are nonexclusive and the application of these rules is not limited to only those tax return preparers covered by the examples.

The IRS and the Treasury Department believe that the expansion of these regulations to currently unenrolled tax return preparers may impact individual taxpayers more than large corporate taxpayers because the IRS and the Treasury Department believe that large corporate taxpayers more likely employ the services of those who are currently regulated than those who are currently unenrolled to prepare their tax returns. The IRS and the Treasury Department are seeking comments on the types of returns (for example: individual versus corporate tax returns) currently being prepared by currently unenrolled tax return preparers.

3. An Assessment of Benefits Anticipated From the Regulatory Action

The primary benefit anticipated from these regulations is that they will improve the accuracy, completeness, and timeliness of tax returns prepared by tax return preparers. As illustrated in the recent government studies, including the IRS's recent review of the tax return preparer industry, inaccurate tax returns are costly both to taxpayers and the government. Inaccurate returns may affect the finances of taxpayers, who might overpay their respective share of taxes or fail to take advantage of available tax benefits. Inaccurate tax returns may also affect the U.S. government because of underpayments and increased costs of enforcement and collection.

The regulations are expected to improve the accuracy, completeness, and timeliness of tax returns in a number of ways. First, requiring tax return preparers to demonstrate the necessary qualifications to provide a valuable service by successfully completing a government or professionally mandated competency examination and continued competence by completing the specified continuing education credits annually will result in more competent and ethical tax return preparers who are well educated in the rules and subject matter. A more competent and ethical tax return preparer community will prevent costly errors, potentially saving taxpayers from unwanted problems and relieving the IRS from expending valuable examination and collection resources. Thus, these proposed regulations are critical to assisting the IRS curtail the activities of noncompliant and unethical tax return preparers.

Second, these regulations, in association with new and separate regulations under section 6109 requiring all individuals who prepare all or substantially all of a tax return for compensation to obtain a PTIN, are expected to improve the accuracy, completeness and timeliness of tax returns because they will help the IRS identify tax return preparers and the tax returns and claims for refund that they prepare, which will aid the IRS's oversight of tax return preparers, and to administer requirements intended to ensure that tax return preparers are competent, trained, and conform to rules of practice. Individuals who prepare all or substantially all of a tax return or claim for refund will be required to obtain a PTIN prescribed by the IRS and furnish the PTIN when the tax return preparer signs (as the tax return preparer) a tax return or claim for refund. These individuals who are currently not attorneys, certified public accountants, or enrolled agents will apply for status as a registered tax return preparer and regularly renew that status. Given the important role that tax return preparers play in Federal tax administration, the IRS has a significant interest in being able to accurately identify tax return preparers and monitor the tax return preparation activities of these individuals. These regulations, in conjunction with the final PTIN regulations, will enable the IRS to more accurately identify tax return preparers and improve the IRS's ability to associate filed tax returns and refund claims with the responsible tax return preparer.

Third, the proposed regulations are expected to improve the accuracy of tax

returns by providing that all registered tax return preparers are practicing before the IRS and, therefore, are practitioners subject to the ethical standards of conduct in Circular 230. This change will authorize OPR to inquire into possible misconduct and institute disciplinary proceedings relating to paid preparer misconduct under the provisions of Circular 230. A paid preparer who is shown to be incompetent or disreputable, fails to comply with the provisions in Circular 230, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client, is subject to censure, suspension, or disbarment from practice before the IRS, as well as a monetary penalty.

The availability of these sanctions will act as a deterrent to paid preparers engaging in misconduct because disreputable or incompetent paid preparers who are suspended or disbarred from practice will no longer be able to prepare tax returns, claims for refund, and other documents submitted to the IRS. Competent and ethical tax return preparers who are well educated in the rules and subject matter of their field can prevent costly errors, potentially saving a taxpayer from unwanted problems later on and relieving the IRS from expending valuable examination and collection resources.

Because these regulations apply to all tax return preparers, the IRS and the Treasury Department anticipate that they will improve the accuracy of tax returns prepared by all types of tax professionals. The IRS and the Treasury Department expect that the largest marginal improvements in accuracy will be with regard to tax returns prepared by tax return preparers who previously were unregulated through the Circular 230 requirements. Unlike certified public accountants, attorneys, and enrolled agents, unenrolled tax return preparers generally are not subject to any form of testing, continuing professional education, or uniform ethical standards. The tax returns prepared by unenrolled tax return preparers may involve tax issues that are less complicated and smaller in amount than issues in tax returns prepared by other types of tax professionals. In addition, individual taxpayers may face a variety of complex tax issues, for which the advice of a qualified tax advisor will improve the accuracy on the return. Finally, by requiring registration of all tax return preparers, these regulations will allow the IRS to better monitor the relative accuracy of tax returns prepared by various types of tax professionals.

Comments are requested on whether these proposed regulations will improve overall tax administration. In particular, comments are specifically requested regarding the extent to which the improved accuracy of tax returns will be achieved through these regulations and whether the testing and continuing education provisions of these regulations are properly focused on currently unregulated tax return preparers.

4. An Assessment of Costs Anticipated From the Regulatory Action

There are various costs anticipated from this regulatory action.

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Cost Category	Preliminary Cost Estimate
COMPETENCY EXAMINATION	
• Costs to registered tax preparers: costs associated with taking a minimum competency examination (including costs of examination, amount of time required to study for the exam, and any associated travel)	Costs to Registered Tax Preparers The costs associated with competency examinations for registered tax preparers are currently unknown. The competency examination has not been developed and an examination vendor has not been selected. The cost of the examination and amount of time required to study for it, therefore, are unknown. The costs for any associated travel will depend on what locations the test is offered in and how close the applicant lives to those locations. While there is currently no vendor for the examination, it is expected that the vendor will offer the test in many locations across the United States and several locations outside the United States.
• Costs to vendors: user fee costs IRS will charge to recover the costs to third-party vendors who administer the registered tax return preparer competency examination	Costs to Vendors The vendor for the examination has not been selected so these fees cannot yet be determined. This vendor fee will include the cost associated with fingerprinting every applicant.
• Costs to government: costs associated with creating, administrating, and reviewing competency exams	Costs to Government These costs are currently unknown. The costs to the government will depend, in part, on which functions will be performed by a vendor. Also, the vendor may recover the vendor's associated costs through a separate fee charged by the vendor. We therefore seek comment from the public on the costs related to competency examination faced by both individuals and the government.

PTIN	
• Costs to registered tax preparers: user fees for applying for a PTIN and renewing a PTIN • Costs to vendors: user fee assessed by third-party vendor to administer the PTIN application and renewal process • Costs to government: administration of PTIN registration program	Costs to Registered Tax Preparers The fees registered tax preparers will face for applying for a PTIN and renewing a PTIN is $50 annually. Given that there are an estimated 800,000 to 1,200,000 individuals who will apply for a PTIN, we estimate that the PTIN registration costs registered tax preparers face will be from $40 million to $60 million. Costs to Vendors These fees are currently unknown because the selected vendor has not yet determined the fee. Costs to Government The $50 annual fee is expected to recover the $59,427,633 annual costs the government will face in its administration of the PTIN registration program. This fee includes: (1) the costs the government faces in administering registration cards or certificates for each registered tax preparer, (2) costs associated with prescribing by forms, instructions, or other guidance which forms and schedules registered tax preparers can sign for, and (3) tax compliance and suitability checks conducted by the government. The $50 fee does not include the cost of fingerprinting which we expect will be covered in the examination fee.
RECORDKEEPING	
• Costs to continuing education providers: recordkeeping requirements on continuing education providers to maintain records and educational material concerning these	Costs to Continuing education providers $38,632,500 annual costs Costs to Registered Tax Preparers $9,880,000 annual costs

programs and the individuals who attend them. • Costs to registered tax preparers: recordkeeping requirements on registered tax preparers to maintain records and educational materials regarding the completion of the required qualifying continuing education credits.	
CONTINUING EDUCATION	
• Costs to registered tax preparers: completing continuing education coursework requirement • Costs to government: user fee for costs to government for review, approval and oversight of continuing education, and fee for IRS recovering these costs.	Costs to registered tax preparers We do not have a cost estimate available for continuing education costs borne by the tax preparers. We seek comment on the cost of continuing education. Costs to government We do not have a cost estimate available for continuing education costs borne by the government for its review, approval and oversight of continuing education requirements imposed by the rule, which will be recovered by a user fee (in a future rulemaking) assessed on continuing education providers. We therefore seek comment from the public on the cost the government will incur.

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Tax return preparers will incur costs associated with taking a minimum competency examination, including the cost of the examination, the amount of time required to study for the examination, and any associated travel depending on the proximity of tax return preparer to the test site location. Although it is anticipated that the vendor will offer the test at several locations in the United States and outside the United States, the vendor and the test locations have not been selected at this time. Future regulations will be proposed that address the costs to the government for creating, administering, and reviewing the examination and the user fee the IRS will charge to recover these costs. The third-party vendor who helps administer the registered tax return preparer competency examination also will charge a reasonable fee to take the registered tax return preparer examination. Comments are specifically requested on the costs associated with the examination and the impact these costs may have on tax return preparers, entities that employ them or taxpayers who use their services.

Additionally, preparers will be subject to user fees for applying for a PTIN and renewing the PTIN. Proposed regulations published in the **Federal Register** on July 23, 2010, establish a $50 fee to apply for a PTIN. A third party vendor will administer the PTIN application and renewal process and will charge a fee that is independent of the user fee charged by the government. Comments are specifically requested on the costs associated with applying for and renewing a PTIN and the impact these costs may have on tax return preparers and entities that employ them.

Tax return preparers will incur recordkeeping and other costs associated with taking continuing education classes and any associated travel. Section 10.6 of these proposed regulations requires a registered tax return preparer to maintain records and educational materials regarding the completion of the required qualifying continuing education credits. The IRS and the Treasury Department estimate that there are 650,000 practitioners who will be affected by these recordkeeping requirements and the estimated annual

burden per practitioner will vary from 30 minutes to one hour, depending on individual circumstances, with an estimated average of 54 minutes. The total annual costs resulting from these recordkeeping requirements will be $9,880,000 for all affected practitioners. Comments are specifically requested on the other costs associated with taking continuing education classes.

Continuing education providers will be subject to recordkeeping costs and user fees for each application for qualification as a qualified continuing education program. Section 10.9 of these proposed regulations requires providers of qualifying continuing education programs to maintain records and educational material concerning these programs and the individuals who attend them. Continuing education providers also obtain approval of each program as a qualified continuing education program. Approximately 500 continuing education providers are currently approved to provide continuing education programs for the approximately 50,000 enrolled agents, enrolled actuaries and enrolled retirement plan agents who must complete continuing education currently, but the IRS and the Treasury Department estimate that there are 2,250 continuing education providers who will be affected by these recordkeeping requirements and the estimated annual burden per continuing education provider will vary from 5 hours to 5,000 hours, depending on individual circumstances, with an estimated average of 500 hours. The estimated total annual costs resulting from these requirements will be $38,632,500 for all affected continuing education providers.

The amounts of the user fee for providing continuing education programs are still to be determined and another regulation addressing user fees will be proposed. These future regulations will address the costs to the government for the review, approval, and oversight of continuing education providers to ensure their compliance with program design and maintenance for continuing education programs and the user fee to be charged by the IRS to recover these costs.

Currently, the cost to the tax return preparer of any particular continuing education course can vary greatly from free to hundreds of dollars. Many tax return preparation firms either provide continuing education courses at the firm to its employees for no charge or sponsor the cost of external courses for its employees. Other tax return preparers, however, will have to personally pay the cost of each continuing education course, which generally ranges anywhere from $20 to $300 per course depending on whether the continuing education provider offers the course in person, online, or over the phone. After the publication of this regulatory action, continuing education providers may increase the costs of the courses in response to the new user fee on continuing education providers. Tax return preparers also may incur additional costs if they travel to attend continuing education programs. These costs may include the time to travel to the program, transportation, lodging and incidentals.

Entities may be directly affected by the competency examination, PTIN and continuing education costs if they choose to pay any or all of the user fees or expenses for their employees. Some individuals and entities also may lose sales and profits while preparers are studying and sitting for the examination or taking the continuing education courses. Finally, individual tax return preparers and entities that employ individuals who prepare tax returns may need to close or change their business model if all, or a majority, of their employees cannot satisfy the necessary qualifications and competency requirements. The IRS and the Treasury Department believe that only a small percentage of tax return preparers will need to close or change their business model based upon these proposed rules. Comments are specifically requested on the costs associated with continuing education and the impact these costs may have on tax return preparers, continuing education providers, entities that employ tax return preparers or taxpayers who use the services of a tax return preparer.

5. An Assessment of Costs and Benefits of Potential Alternatives

The IRS and the Treasury Department considered various alternatives in determining the best ways to implement proposed changes to the regulation of tax return preparers. In order to place the costs and benefits of the proposed rule in context, E.O. 12866 requires a comparison between the proposed rule, a baseline of what the world would look like without the proposed rule, and reasonable alternatives to the proposed rule.

i. Baseline Scenario

Under a baseline scenario, the current ethical standards in Circular 230 would continue to apply only to attorneys, certified public accountants, enrolled agents, and other practitioners who prepare tax returns and claims for refund, but not to unenrolled tax return preparers. Also, any unenrolled tax return preparer under this baseline scenario would be able to prepare and sign tax returns and claims for refund without passing an examination to establish competence or satisfying continuing education requirements.

Remaining under the current rules regarding tax return preparers would eliminate the benefits of the proposed rule described in section A2 of this preamble. For example, under the baseline, OPR would not be authorized to institute disciplinary proceedings seeking sanctions against unenrolled tax return preparers.

Continuing to authorize any individual to prepare tax returns and claims for refund for compensation without passing an examination or taking continuing education courses also would eliminate any costs associated with the proposed rule described in section A3 of this preamble. Tax return preparers, however, would still potentially be subject to user fees for obtaining a PTIN and renewing the PTIN if other Treasury Department and IRS regulations specifically prescribed those fees.

ii. Alternative One

The first alternative that was considered is to require all tax return preparers to comply with the ethical standards in Circular 230, but not to require any tax return preparer to pass an examination and complete continuing education courses. Under this alternative, the provisions of the proposed rule clarifying that tax return preparers are subject to the ethical rules in Circular 230 would remain intact, but all of the other changes would not be adopted.

The benefits resulting from this alternative would likely be less than the rules in the proposed regulations because tax return preparers would not need to meet a minimum competency level and keep educated and up-to-date on Federal tax issues. The most significant drawback to this alternative is the potential loss of these benefits and the benefits that result from monitoring the return preparation activities of tax return preparers generally. Under this alternative, however, tax return preparers would not incur the majority of costs that exist under the proposed regulations.

iii. Alternative Two

A second alternative is to require tax return preparers who are not currently authorized to practice before the IRS to apply for such authorization with the IRS, satisfy annual continuing education requirements, and meet certain ethical

standards, but not to pass a minimum competency examination. This alternative is identical to the proposed regulations other than requiring certain preparers to successfully pass an examination administered by, or under the oversight of, the IRS.

The benefits resulting from this alternative are more comparable to the benefits in the proposed regulations than under the alternative one. Nevertheless, the lack of an examination probably would not be as effective in ensuring that tax return preparers are qualified to obtain professional credentials and practice before the IRS. Tax return preparers under this alternative would incur all of the same costs that are in the proposed regulations other than the costs associated with taking the examination.

iv. Alternative Three

A third alternative is to "grandfather in" unenrolled tax return preparers who have accurately and competently prepared tax returns for a certain amount of years. This alternative is the same as the rules in the proposed regulations other than authorizing some unenrolled return preparers who have a specified amount of prior experience preparing tax returns and claims for refund to continue to prepare and sign returns without passing a minimum competency examination.

The benefits resulting from this alternative would likely be less than the rules in the proposed regulations because the IRS and the Treasury Department believe a minimum level of competency needs to be assured through examination. Additionally, this alternative is not as likely to promote the same taxpayer confidence in the tax return preparation community as the proposed regulations, which may, in turn, influence taxpayers when choosing a tax return preparer. Tax return preparers under this alternative would incur all of the same costs that are in the proposed regulations except certain unenrolled preparers would avoid the costs associated with taking the examination.

Comments are specifically requested on the benefits and costs of these alternatives compared to the approach taken in the proposed regulations.

B. Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency "to prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." *See* 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. *See* 5 U.S.C. 601(3) through (6). The IRS and the Treasury Department conclude that the proposed regulations, if promulgated, will impact a substantial number of small entities and the economic impact will be significant. As a result, an initial regulatory flexibility analysis is required.

1. Description of the Reasons Why the Agency Action Is Being Considered

As discussed in more detail in section A1 of this preamble, tax return preparers are critical to ensuring compliance with the Federal tax laws and are an important component in the IRS's administration of those laws. More than eighty percent of U.S. taxpayers use a tax return preparer or consumer tax return preparation software to help prepare and file tax returns. Most tax return preparers are currently not subject to the ethical rules governing practice before the IRS and do not have to pass any competency requirement established by the government or a professional organization. After completing a comprehensive six-month review of tax return preparers, which included receiving input through public forums, solicitation of written comments, and meetings with advisory groups, the IRS concluded that there was a need for increased oversight of the tax return preparer industry. These proposed regulations implement higher standards for the tax return preparer community with the goal of significantly enhancing protections and service for taxpayers, increasing confidence in the tax system, and resulting in greater long-term compliance with the tax laws.

2. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The principal objective of the proposed regulations is to increase oversight of all tax return preparers and to provide guidance to tax return preparers about the new requirements imposed on them under Circular 230. Specifically, the proposed regulations clarify that any registered tax return preparer is a practitioner practicing before the IRS and thereby is subject to the ethical rules in Circular 230. The proposed regulations require a tax return preparer to demonstrate the necessary qualifications and competency to advise and assist other persons in the preparation of all or substantially all of a tax return or claim for refund. The legal basis for these requirements is contained in section 330 of title 31.

3. Description and Estimate (Where Feasible) of the Number of Small Entities Subject to the Proposed Rule

The proposed regulations affect all individuals currently working as paid preparers, individuals who want to become designated as a registered tax return preparer under the new oversight rules in Circular 230, and those small entities that are owned by or employ paid preparers. Only individuals, not businesses, can practice before the IRS or become a registered tax return preparer. Thus, the economic impact of these regulations on any small entity generally will be a result of an unenrolled individual owning a small business or on a small business that otherwise employs unenrolled paid return preparers. These regulations also will economically affect any small entity that is a provider of qualifying continuing education programs.

The appropriate NAICS codes for tax return preparers relate to tax preparation services (NAICS code 541213) and other accounting services (NAICS code 541219). Entities identified under these codes are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than $7 million or $8.5 million, respectively. The IRS estimates that approximately seventy to eighty percent of the individuals subject to these proposed regulations are paid preparers operating as or employed by small entities. The IRS estimates that there will be 2,250 providers of qualifying continuing education programs.

4. Description of the Projected Reporting, Recordkeeping and Related Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

The IRS estimates that there are approximately 600,000 to 700,000 unenrolled tax return preparers who are currently not attorneys, certified public accountants, or enrolled agents and who will apply for status as a registered tax return preparer if these proposed rules are adopted. Under the proposed regulations, tax return preparers who become registered tax return preparers are subject to a recordkeeping requirement within the meaning of the PRA because they are required to

maintain records and educational materials regarding the satisfaction of their qualifying continuing education requirements. These recordkeeping requirements do not require any specific professional skills other than general recordkeeping skills already needed to own and operate a small business or to competently act as a tax return preparer. It is estimated that practitioners will annually spend approximately 30 minutes to one hour in maintaining the required records, depending on individual circumstances.

The estimated 2,250 providers of qualifying continuing education programs will be required to maintain records and educational material concerning these programs and the persons who attended them. These entities will need to obtain approval of the program as a qualified continuing education program from OPR. These continuing education providers will annually spend approximately 5 minutes per attendee maintaining the required records and approximately 30 minutes to one hour per program completing and filing the application for approval as a qualified continuing education program.

As previously discussed in section A3 of this preamble, the proposed rule contains a number of other compliance requirements not subject to the PRA. These include the costs tax return preparers incur to take a competency examination, costs for continuing education classes, and other incidental costs and user fees. Small entities may be directly affected by these costs if they choose to pay any or all of these fees for their employees. In some cases, small entities may lose sales and profits while their employees prepare for and take the examination or participate in continuing education courses. Finally, some small entities that employ individuals who prepare tax returns may need to alter their business model if a significant number of their employees cannot satisfy the necessary qualifications and competency requirements. The IRS and the Treasury Department believe that only a small percentage of small entities, if any, may need to cease doing business or radically change their business model due to these proposed rules.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

All tax return preparers currently are subject to various civil and criminal penalties under the Code. For example, section 6694 imposes civil penalties on tax return preparers for conduct giving rise to certain understatements of liability on a return, while section 6695 imposes civil penalties for, among other acts, failing to sign or provide an identification number on a return they prepare. Tax return preparers who demonstrate a pattern of misconduct may be enjoined from preparing further returns under section 7407. Additionally, the IRS, under its broad authority to regulate the filing of electronic returns, requires any tax return preparer who files returns electronically to comply with certain rules, including requiring the electronic return originator to pass background and credit history checks. The IRS and the Treasury Department believe that the proposed rules complement these existing rules with a resulting comprehensive enforcement strategy that ensures that all tax return preparers are assisting clients appropriately.

6. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The IRS received a large volume of comments, through the Return Preparer Review, on the oversight and enforcement of tax return preparers from all interested parties, including tax professional groups representing large and small entities, Federal and state organizations, IRS advisory groups, software vendors, individual return preparers, and the public. The input received from this large and diverse community overwhelmingly expressed support for efforts to increase the oversight of tax return preparers, particularly for those who are not attorneys, certified public accountants, or other individuals currently authorized to practice before the IRS.

In concert with this tremendous public support for increased IRS oversight of tax return preparers, the IRS and the Treasury Department considered various alternatives in determining the best ways to implement proposed changes to the regulation of paid preparers. As discussed in more detail in section A4 of this preamble, these alternatives included:

(1) Requiring all tax return preparers to comply with the ethical standards in Circular 230 or a code of ethics similar to Circular 230, but not requiring any tax return preparers to demonstrate their qualifications and competency;

(2) Requiring tax return preparers who are not currently authorized to practice before the IRS to apply for authorization with the IRS, satisfy annual continuing education requirements, and meet certain ethical standards, but not to pass a minimum competency examination; and

(3) Requiring all tax return preparers who are not currently authorized to practice before the IRS to pass a minimum competency examination and meet other requirements, but "grandfather in" tax return preparers who have accurately and competently prepared tax returns for a certain number of years.

After consideration of these and other alternatives and all of the input provided through the public comment process, the IRS and the Treasury Department concluded that the provisions of the proposed regulations are necessary for sound tax administration and are the best way to increase oversight of all paid preparers. The testing requirements in the proposed rules will ensure that tax return preparers pass a minimum competency examination to obtain their professional credentials, while the continuing education requirements will help ensure that tax return preparers remain current on Federal tax law and continue to expand their tax knowledge. The extension of the rules in Circular 230 to registered tax return preparers will require all practitioners to meet certain ethical standards and allow the IRS to suspend or otherwise discipline tax return preparers who engage in unethical or disreputable conduct. Accordingly, the implementation of the qualification and competency standards in these proposed rules is expected to increase taxpayer compliance and ensure uniform and high ethical standards of conduct for tax return preparers. The public comments submitted during the Return Preparer Review overwhelmingly supported the provisions in these proposed rules.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments that are submitted by the public will be made available for public inspection and copying.

A public hearing has been scheduled for Friday, October 8, 2010, beginning at 10 a.m. in Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building

security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by Monday, September 27, 2010. A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Matthew S. Cooper of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 31 CFR Part 10

Accountants, Administrative practice and procedure, Lawyers, Reporting and recordkeeping requirements, Taxes.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 31 U.S.C. 330, the notice of proposed rulemaking (REG–138637–07) that was published in the **Federal Register** on September 26, 2007 (72 FR 54621) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 31 CFR part 10 is proposed to be amended to read as follows:

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Paragraph 1. The authority citation for 31 CFR part 10 is revised to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 et seq.; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 321; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., p. 1017.

Par. 2. Section 10.0 is revised to read as follows:

§ 10.0 Scope of part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other persons representing taxpayers before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service; Subpart B of this part prescribes the duties and restrictions relating to such practice; Subpart C of this part prescribes the sanctions for violating the regulations; Subpart D of this part contains the rules applicable to disciplinary proceedings; and Subpart E of this part contains general provisions relating to the availability of official records.

Par. 3. Section 10.2 is amended by revising paragraphs (a)(4), (a)(5), and (b) and adding paragraph (a)(8) to read as follows:

§ 10.2 Definitions.

(a) * * *

(4) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

(5) *Practitioner* means any individual described in paragraphs (a), (b), (c), (d), (e), or (f) of § 10.3.

* * * * *

(8) *Tax return preparer* means any individual within the meaning of section 7701(a)(36) and 26 CFR 301.7701–15.

(b) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 4. Section 10.3 is amended by:

1. Redesignating paragraphs (f), (g), (h), and (i) as paragraphs (g), (h), (i), and (j), respectively.

2. Adding new paragraph (f).

3. Revising paragraphs (d)(3) and (e)(3), and newly designated paragraph (j).

The revisions and additions read as follows:

§ 10.3 Who may practice.

* * * * *

(d) * * *

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (d)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and registered tax return preparers.

(e) * * *

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (e)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled actuaries, and registered tax return preparers.

(f) *Registered tax return preparers.* (1) Any individual who is designated as a registered tax return preparer pursuant to § 10.4(c) of this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as a registered tax return preparer is limited to preparing tax returns, claims for refund, and other documents for submission to the Internal Revenue Service. A registered tax return preparer may prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for which the registered tax return preparer has passed the requisite written examination. A registered tax return preparer also may sign tax returns, claims for refund, or other documents for which the registered tax return preparer has passed the requisite written examination. The Internal Revenue Service will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund, including the schedules and forms, that a registered tax return preparer may prepare or sign based on the written examination that the registered tax return preparer has successfully completed. A registered tax return preparer may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service during an examination if the registered tax return preparer signed the tax return or claim for refund for the taxable year or period under examination. Unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees

of the Internal Revenue Service or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the Internal Revenue Service.

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (f)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries.

* * * * *

(j) *Effective/applicability date.* This section is generally applicable 60 days after the date that final regulations are published in the **Federal Register.**

Par. 5. Section 10.4 is revised to read as follows:

§ 10.4 Eligibility to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Enrollment as an enrolled agent upon examination.* The Director of the Office of Professional Responsibility may grant enrollment as an enrolled agent to an applicant who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Director of the Office of Professional Responsibility and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted.

(b) *Enrollment as a retirement plan agent upon examination.* The Director of the Office of Professional Responsibility may grant enrollment as an enrolled retirement plan agent to an applicant who demonstrates special competence in qualified retirement plan matters by written examination administered by, or administered under the oversight of, the Director of the Office of Professional Responsibility and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(c) *Designation as a registered tax return preparer.* The Director of the Office of Professional Responsibility may designate an individual as a registered tax return preparer provided an applicant demonstrates competence in Federal tax return preparation matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, possesses a current or otherwise valid PTIN or other prescribed identifying number, and has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted.

(d) *Enrollment of former Internal Revenue Service employees.* The Director of the Office of Professional Responsibility may grant enrollment as an enrolled agent or enrolled retirement plan agent to an applicant who, by virtue of past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part, under the following circumstances—

(1) The former employee applies for enrollment to the Director of the Office of Professional Responsibility on a form supplied by the Director of the Office of Professional Responsibility and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) An appropriate office of the Internal Revenue Service, at the request of the Director of the Office of Professional Responsibility, will provide the Director of the Office of Professional Responsibility with a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

(3) Enrollment as an enrolled agent based on an applicant's former employment with the Internal Revenue Service may be of unlimited scope or it may be limited to permit the presentation of matters only of the particular specialty or only before the particular unit or division of the Internal Revenue Service for which the applicant's former employment has qualified the applicant. Enrollment as an enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service will be limited to permit the presentation of matters only with respect to qualified retirement plan matters.

(4) Application for enrollment as an enrolled agent or enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service must be made within three years from the date of separation from such employment.

(5) An applicant for enrollment as an enrolled agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to income, estate, gift, employment, or excise taxes.

(6) An applicant for enrollment as an enrolled retirement plan agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to qualified retirement plan matters.

(7) For the purposes of paragraphs (d)(5) and (d)(6) of this section, an aggregate of 10 or more years of employment in positions involving the application and interpretation of the provisions of the Internal Revenue Code, at least three of which occurred within the five years preceding the date of application, is the equivalent of five years continuous employment.

(e) *Natural persons.* Enrollment or authorization to practice may be granted only to natural persons.

(f) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register.**

Par. 6. Section 10.5 is revised to read as follows:

§ 10.5 Application to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Form; address.* An applicant to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer must apply as required by forms or procedures established and published by the Internal Revenue Service, including proper execution of required forms under oath or affirmation. The address on the application will be the address under which a successful applicant is enrolled or registered and is the address to which all correspondence concerning enrollment or registration will be sent.

(b) *Fee.* A reasonable nonrefundable fee will be charged for each application filed with the Director of the Office of

Professional Responsibility. *See* 26 CFR part 300.

(c) *Additional information; examination.* The Director of the Office of Professional Responsibility, as a condition to consideration of an application, may require the applicant to file additional information and to submit to any written or oral examination under oath or otherwise. The Director of the Office of Professional Responsibility will, on written request filed by the applicant, afford such applicant the opportunity to be heard with respect to his or her application for enrollment.

(d) *Compliance and suitability checks.* (1) As a condition to consideration of an application, the Internal Revenue Service may conduct a Federal tax compliance check and suitability check. The tax compliance check will be limited to an inquiry regarding whether an applicant has filed all required individual or business tax returns and whether the applicant has failed to pay, or make proper arrangement with the Internal Revenue Service for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether an applicant has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted, including whether the applicant has engaged in disreputable conduct as defined in § 10.51. The application will be denied only if the results of the compliance or suitability check are sufficient to establish that the practitioner engaged in conduct subject to sanctions under § 10.51 and § 10.52.

(2) If the applicant does not pass the tax compliance or suitability check, the applicant will not be issued an enrollment or registration card or certificate pursuant to § 10.6(b) of this part, and will be provided information regarding the denial of the application and the rules on appealing the denial. An applicant who is initially denied enrollment or registration for failure to pass a tax compliance check may reapply after the initial denial if the applicant becomes current with respect to the applicant's tax liabilities.

(e) *Temporary recognition.* On receipt of a properly executed application, the Director of the Office of Professional Responsibility may grant the applicant temporary recognition to practice pending a determination as to whether status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer should be granted. Temporary recognition will be granted only in unusual circumstances and it will not be granted, in any circumstance, if the application is not regular on its face, if the information stated in the application, if true, is not sufficient to warrant granting the application to practice, or if there is any information before the Director of the Office of Professional Responsibility indicating that the statements in the application are untrue or that the applicant would not otherwise qualify to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer. Issuance of temporary recognition does not constitute either a designation or a finding of eligibility as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, and the temporary recognition may be withdrawn at any time by the Director of the Office of Professional Responsibility.

(f) *Appeal from denial of application.* The Director of the Office of Professional Responsibility must inform the applicant in writing as to the reason(s) for any denial of an application. The applicant may, within 30 days after receipt of the notice of denial of the application, file a written appeal of the denial with the Secretary of the Treasury or delegate. A decision on the appeal will be rendered by the Secretary, or delegate, as soon as practicable.

(g) *Effective/applicability date.* This section is applicable to applications received 60 days after the date that final regulations are published in the **Federal Register**.

Par. 7. Section 10.6 is revised to read as follows:

§ 10.6 Term and renewal of status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Term.* Each individual authorized to practice before the Internal Revenue Service as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will be accorded active enrollment or registration status subject to renewal of enrollment or registration as provided in this part.

(b) *Enrollment or registration card or certificate.* The Director of the Office of Professional Responsibility will issue an enrollment or registration card or certificate to each individual whose application to practice before the Internal Revenue Service is approved. Each card or certificate will be valid for the period stated on the card or certificate. An enrolled agent or registered tax return preparer may not practice before the Internal Revenue Service if the card or certificate is not current or otherwise valid. The card or certificate is in addition to any certificate that may be issued to each attorney, certified public accountant, enrolled agent, or registered tax return preparer who obtains a preparer tax identification number.

(c) *Change of address.* An enrolled agent, enrolled retirement plan agent, or registered tax return preparer must send notification of any change of address to the address specified by the Director of the Office of Professional Responsibility within 60 days of the change of address. This notification must include the enrolled agent's, enrolled retirement plan agent's, or registered tax return preparer's name, prior address, new address, tax identification number(s) (including preparer tax identification number), and the date the change of address became effective. Unless this notification is sent, the address for purposes of any correspondence from the Director of the Office of Professional Responsibility shall be the address as reflected on the practitioner's most recent application for enrollment or registration, or application for renewal of enrollment or registration.

(d) *Renewal*—(1) *In general.* Designation as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer must be renewed periodically to maintain active status to practice before the Internal Revenue Service. Failure to receive notification from the Director of the Office of Professional Responsibility of the renewal requirement will not be justification for the individual's failure to satisfy this requirement.

(2) *Renewal period for enrolled agents.* (i) All individuals enrolled to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 0, 1, 2, or 3, except for those individuals who received their initial enrollment after November 1, 2003, must apply for renewal between November 1, 2003, and January 31, 2004. The renewal will be effective April 1, 2004.

(ii) All individuals enrolled to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 4, 5, or 6, except for those individuals who received their initial enrollment after November 1, 2004, must apply for renewal between November 1, 2004, and January 31, 2005. The renewal will be effective April 1, 2005.

(iii) All individuals enrolled to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 7, 8, or 9, except for those individuals who received their initial enrollment after

November 1, 2005, must apply for renewal between November 1, 2005, and January 31, 2006. The renewal will be effective April 1, 2006.

(iv) Thereafter, applications for renewal as an enrolled agent will be required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(2)(i), (d)(2)(ii), or (d)(2)(iii) of this section according to the last number of the individual's social security number or tax identification number. Those individuals who receive initial enrollment as an enrolled agent after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment.

(3) *Renewal period for enrolled retirement plan agents.* Applications for renewal as an enrolled retirement plan agent will be required of all enrolled retirement plan agents between April 1 and June 30 of every third year period subsequent to their initial enrollment.

(4) *Renewal period for registered tax return preparers.* Applications for renewal as a registered tax return preparer will be required of all registered tax return preparers as prescribed in forms, instructions, or other appropriate guidance.

(5) *Notification of renewal.* After review and approval, the Director of the Office of Professional Responsibility will notify the individual of the renewal and will issue the individual a card or certificate evidencing current status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(6) *Fee.* A reasonable nonrefundable fee will be charged for each application for renewal filed with the Director of the Office of Professional Responsibility. *See* 26 CFR part 300.

(7) *Forms.* Forms required for renewal may be obtained by sending a written request to the Director of the Office of Professional Responsibility, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or from such other source as the Internal Revenue Service will publish in the Internal Revenue Bulletin (*see* 26 CFR 601.601(d)(2)(ii)(*b*)) and on the Internal Revenue Service Web page (*www.irs.gov*).

(e) *Condition for renewal: continuing education.* In order to qualify for renewal as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, an individual must certify, in the manner prescribed by the Internal Revenue Service, that the individual has satisfied the required continuing education requirements.

(1) *Definitions.* For purposes of this section—

(i) *Enrollment year* means January 1 to December 31 of each year of an enrollment cycle.

(ii) *Enrollment cycle* means the three successive enrollment years preceding the effective date of renewal.

(iii) *Registration year* means each 12-month period the registered tax return preparer is authorized to practice before the Internal Revenue Service.

(iv) The *effective date of renewal* is the first day of the fourth month following the close of the period for renewal described in paragraph (d) of this section.

(2) *For renewed enrollment as an enrolled agent or enrolled retirement plan agent*—(i) *Requirements for enrollment cycle.* A minimum of 72 hours of continuing education credit, including six hours of ethics or professional conduct, must be completed during each enrollment cycle.

(ii) *Requirements for enrollment year.* A minimum of 16 hours of continuing education credit, including two hours of ethics or professional conduct, must be completed during each enrollment year of an enrollment cycle.

(iii) *Enrollment during enrollment cycle*—(A) *In general.* Subject to paragraph (e)(2)(iii)(B) of this section, an individual who receives initial enrollment during an enrollment cycle must complete two hours of qualifying continuing education credit for each month enrolled during the enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(B) *Ethics.* An individual who receives initial enrollment during an enrollment cycle must complete two hours of ethics or professional conduct for each enrollment year during the enrollment cycle. Enrollment for any part of an enrollment year is considered enrollment for the entire year.

(3) *Requirements for renewal as a registered tax return preparer.* A minimum of 15 hours of continuing education credit, including two hours of ethics or professional conduct, three hours of Federal tax law updates, and 10 hours of Federal tax law topics, must be completed during each registration year.

(f) *Qualifying continuing education*—(1) *General*—(i) *Enrolled agents.* To qualify for continuing education credit for an enrolled agent, a course of learning must—

(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics); and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(ii) *Enrolled retirement plan agents.* To qualify for continuing education credit for an enrolled retirement plan agent, a course of learning must—

(A) Be a qualifying continuing education program designed to enhance professional knowledge in qualified retirement plan matters; and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(iii) *Registered tax return preparers.* To qualify for continuing education credit for a registered tax return preparer, a course of learning must—

(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics); and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(2) *Qualifying programs*—(i) *Formal programs.* A formal program qualifies as a continuing education program if it—

(A) Requires attendance and provides each attendee with a certificate of attendance;

(B) Requires that the program be conducted by a qualified instructor, discussion leader, or speaker (in other words, a person whose background, training, education, and experience is appropriate for instructing or leading a discussion on the subject matter of the particular program);

(C) Provides or requires a written outline, textbook, or suitable electronic educational materials; and

(D) Is approved as a qualified continuing education program by the Director of the Office of Professional Responsibility pursuant to § 10.9.

(ii) *Correspondence or individual study programs (including taped programs).* Qualifying continuing education programs include correspondence or individual study programs that are conducted by continuing education providers and completed on an individual basis by the enrolled individual. The allowable

credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs only if they—

(A) Require registration of the participants by the continuing education provider;

(B) Provide a means for measuring successful completion by the participants (for example, a written examination), including the issuance of a certificate of completion by the continuing education provider;

(C) Provide a written outline, textbook, or suitable electronic educational materials; and

(D) Are approved as a qualified continuing education program by the Director of the Office of Professional Responsibility pursuant to § 10.9.

(iii) *Serving as an instructor, discussion leader or speaker.* (A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program that meets the continuing education requirements of paragraph (f) of this section.

(B) A maximum of two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader, or speaker at such programs. It is the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum credit for instruction and preparation may not exceed four hours annually of the continuing education requirement.

(D) An instructor, discussion leader, or speaker who makes more than one presentation on the same subject matter during an enrollment cycle or registration year, will receive continuing education credit for only one such presentation for the enrollment cycle or registration year.

(3) *Periodic examination.* (i) Enrolled individuals may establish eligibility for renewal of enrollment for any enrollment cycle by—

(A) Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and

(B) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(ii) Courses designed to help an applicant prepare for the examination specified in § 10.4 are considered basic in nature and are not qualifying continuing education.

(g) *Measurement of continuing education coursework.* (1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, which is 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as only one contact hour.

(3) Individual segments at continous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(h) *Recordkeeping requirements.* (1) Each individual applying for renewal must retain for a period of four years following the date of renewal the information required with regard to qualifying continuing education credit hours. Such information includes—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program, qualified program number, and description of its content;

(iv) Written outlines, course syllibi, textbook, and/or electronic materials provided or required for the course;

(v) The dates attended;

(vi) The credit hours claimed;

(vii) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and

(viii) The certificate of completion and/or signed statement of the hours of attendance obtained from the continuing education provider.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of four years following the date of renewal —

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and copy of its content;

(iv) The dates of the program; and

(v) The credit hours.claimed.

(i) *Waivers.* (1) Waiver from the continuing education requirements for a given period may be granted by the Director of the Office of Professional Responsibility for the following reasons—

(i) Health, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual is required to furnish any additional documentation or explanation deemed necessary by the Director of the Office of Professional Responsibility. Examples of appropriate documentation could be a medical certificate or military orders.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be placed in inactive status, so notified by the Director of the Office of Professional Responsibility, and placed on a roster of inactive enrolled agents, enrolled retirement plan agents, or registered tax return preparers.

(5) If a request for waiver is approved, the individual will be notified and issued a card or certificate evidencing renewal.

(6) Those who are granted waivers are required to file timely applications for renewal of enrollment or registration.

(j) *Failure to comply.* (1) Compliance by an individual with the requirements of this part is determined by the Director of the Office of Professional Responsibility. An individual who fails to meet the continuing education and fee requirements of eligibility for renewal will be notified by the Director of the Office of Professional Responsibility. The notice will state the basis for the determination of noncompliance and will provide the individual an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered by the Director of the Office of Professional Responsibility in making a final determination as to eligibility for renewal. The Director of the Office of Professional Responsibility must inform the individual as to the reason(s) for any denial of a renewal. The individual may, within 30 days after receipt of the notice of denial of renewal, file a written appeal of the denial with the Secretary or delegate. A

decision on the appeal will be rendered by the Secretary, or delegate, as soon as practicable.

(2) The Director of the Office of Professional Responsibility may require any individual to provide copies of any records required to be maintained under this part. The Director of the Office of Professional Responsibility may disallow any continuing education hours claimed if the individual fails to comply with this requirement.

(3) An individual who has not filed a timely application for renewal, who has not made a timely response to the notice of noncompliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals or inactive registered individuals. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(4) Individuals placed in inactive status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are eligible to practice before the Internal Revenue Service, or use the terms enrolled agent, enrolled retirement plan agent, or registered tax return preparer, the designations "EA" or "ERPA" or other form of reference to eligibility to practice before the Internal Revenue Service.

(5) An individual placed in inactive status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of all required continuing education hours for the enrollment cycle or registration year. Continuing education credit under this paragraph (k)(5) may not be used to satisfy the requirements of the enrollment cycle or registration year in which the individual has been placed back on the active roster.

(6) An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal as set forth in this section within three years of being placed in inactive status. Otherwise, the name of such individual will be removed from the inactive status roster and the individual's status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will terminate. Future eligibility for active status must then be reestablished by the individual as provided in this section.

(7) Inactive status is not available to an individual who is the subject of a pending disciplinary matter before the Office of Professional Responsibility.

(k) *Inactive retirement status.* An individual who no longer practices before the Internal Revenue Service may request to be placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. An individual who is placed in an inactive retirement status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of the required continuing education hours for the enrollment cycle or registration year. Inactive retirement status is not available to an individual who is ineligible to practice before the Internal Revenue Service or who is the subject of a disciplinary matter in the Office of Professional Responsibility.

(l) *Renewal while under suspension or disbarment.* An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action by the Director of the Office of Professional Responsibility is required to conform to the requirements for renewal of enrollment or registration before the individual's eligibility is restored.

(m) *Verification.* The Director of the Office of Professional Responsibility may review the continuing education records of an enrolled agent, enrolled retirement plan agent, or registered tax return preparer in any manner deemed appropriate to determine compliance with the requirements and standards for renewal as provided in paragraph (f) of this section.

(n) *Enrolled actuaries.* The enrollment and renewal of enrollment of actuaries authorized to practice under paragraph (d) of § 10.3 are governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 through 901.72.

(o) *Effective/applicability date.* This section is applicable to enrollment or registration effective 60 days after the date that final regulations are published in the **Federal Register**.

Par. 8. Section 10.7 is amended by:

1. Revising the section heading.
2. Removing paragraphs (c)(1)(viii) and (e).
3. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f).
4. Revising newly designated paragraphs (e) and (f).

The revisions read as follows:

§ 10.7 Representing oneself; participating in rulemaking; limited practice; and special appearances.

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(e) *Fiduciaries.* For purposes of this part, a fiduciary (for example, a trustee, receiver, guardian, personal representative, administrator, or executor) is considered to be the taxpayer and not a representative of the taxpayer.

(f) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 9. Section 10.8 is revised to read as follows: *§ 10.8 Return preparation and application of rules to other individuals.*

(a) *Preparing tax returns and furnishing information.* Any individual may prepare or assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund), appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(b) *Application of rules to other individuals.* Any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the Internal Revenue Service is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C. Unless otherwise a practitioner, however, an individual may not prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund, or sign tax returns and claims for refund. For purposes of this paragraph, an individual described in 26 CFR 301.7701–15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance.

(c) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 10. Section 10.9 is added to subpart A to read as follows: *§ 10.9 Continuing education programs.*

(a) *Continuing education providers—*(1) *In general.* Continuing education providers are those responsible for presenting continuing education programs. A continuing education provider must—

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia; or

(iii) Be recognized by the Director of the Office of Professional Responsibility

as one who offers a qualified continuing education program.

(2) *Qualification of continuing education program.* A continuing education provider must obtain the approval of the Director of the Office of Professional Responsibility for each program to be qualified as a qualified continuing education program in the time and manner required by forms or procedures established and published by the Internal Revenue Service.

(3) *Requirements for qualified continuing education program.* A continuing education provider must ensure the qualified continuing education program complies with all the following requirements—

(i) Programs must be developed by individual(s) qualified in the subject matter;

(ii) Program subject matter must be current;

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content;

(iv) Programs must include some means for evaluation by the Director of the Office of Professional Responsibility of technical content and presentation;

(v) Certificates of completion bearing a current qualified continuing education program number issued by the Director of the Office of Professional Responsibility must be provided to the participants who successfully complete the program; and

(vi) Records must be maintained by the continuing education provider to verify the participants who attended and completed the program for a period of four years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(4) *Fees.* Reasonable nonrefundable fees may be charged for each qualification of a qualified continuing education program. *See* 26 CFR part 300.

(b) *Failure to comply.* Compliance by a continuing education provider with the requirements of this part is determined by the Director of the Office of Professional Responsibility. A continuing education provider who fails to meet the requirements of this part will be notified by the Director of the Office of Professional Responsibility. The notice will state the basis for the determination of noncompliance and will provide the continuing education provider an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered by the Director of the Office of Professional Responsibility in making a determination as to the qualification of a program as a qualified continuing education program. The Director of the Office of Professional Responsibility must inform the continuing education provider as to the reason(s) for any denial of a program as a qualified continuing education program. The continuing education provider may, within 30 days after receipt of the notice of denial, file a written appeal with the Secretary or delegate. A decision on the appeal will be rendered by the Secretary or delegate, as soon as practicable.

(c) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 11. Section 10.30 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 10.30 Solicitation.

(a) *Advertising and solicitation restrictions.* (1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form or public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents, enrolled retirement plan agents, or registered tax return preparers, in describing their professional designation, may not utilize the term "certified" or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service." Similarly, examples of acceptable descriptions for enrolled retirement plan agents are "enrolled to represent taxpayers before the Internal Revenue Service as a retirement plan agent" and "enrolled to practice before the Internal Revenue Service as a retirement plan agent." An example of an acceptable description for registered tax return preparers is "designated as a registered tax return preparer with the Internal Revenue Service."

* * * * *

(e) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 12. Section 10.34 is amended by:

1. Adding paragraph (a).

2. Redesignating paragraph (f) as paragraph (e).

3. Revising newly designated paragraph (e).

The revisions read as follows:

§ 10.34 Standards with respect to tax returns and documents, affidavits and other papers.

(a) *Tax returns.* (1) A practitioner may not willfully, recklessly, or through gross incompetence—

(i) Sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that—

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Internal Revenue Code (Code) (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(ii) Advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that—

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Code (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(2) A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted willfully, recklessly, or through gross incompetence.

* * * * *

(e) *Effective/applicability date.* Paragraph (a) of this section is applicable for returns or claims for refund filed, or advice provided, 60 days after the date that final regulations are published in the **Federal Register**. Paragraphs (b) through (d) of this section are applicable to tax returns, documents, affidavits, and other papers filed on or after September 26, 2007.

Par. 13. Section 10.36 is amended by:

1. Redesignating paragraph (b) as paragraph (c).

2. Adding new paragraph (b).

3. Revising newly designated paragraph (c).

The addition and revisions read as follows:

§ 10.36 Procedures to ensure compliance.

* * * * *

(b) *Requirements for tax returns and other documents.* Any practitioner who has (or practitioners who have or share) principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds, or other documents for submission to the Internal Revenue Service must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with Circular 230. Any practitioner who has (or practitioners who have or share) this principal authority will be subject to discipline for failing to comply with the requirements of this paragraph if—

(1) The practitioner through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with Circular 230, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with Circular 230; or

(2) The practitioner knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, who does not comply with Circular 230, and the practitioner, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

(c) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 14. Section 10.51 is amended by adding paragraphs (a)(16), (a)(17), and (a)(18) and revising paragraph (b) to read as follows:

§ 10.51 Incompetence and disreputable conduct.

(a) * * *

(16) Willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(17) Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number.

(18) Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so pursuant to this part.

(b) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Par. 15. Section 10.90 is amended by:

1. Revising paragraph (a).

2. Redesignating the second paragraph (b) as paragraph (c).

3. Revising newly designated paragraph (c).

The revisions read as follows:

§ 10.90 Records.

(a) *Roster.* The Director of the Office of Professional Responsibility will maintain, and may make available for public inspection in the time and manner prescribed by the Secretary, or delegate, rosters of —

(1) Individuals (and employers, firms, or other entities, if applicable) censured, suspended, or disbarred from practice before the Internal Revenue Service or upon whom a monetary penalty was imposed.

(2) Enrolled agents, including individuals—

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted by the Director of the Office of Professional Responsibility under § 10.61.

(3) Enrolled retirement plan agents, including individuals—

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted by the Director of the Office of Professional Responsibility under § 10.61.

(4) Registered tax return preparers, including individuals—

(i) Authorized to prepare all or substantially all of a tax return or claim for refund;

(ii) Who have been placed in inactive status for failure to meet the requirements for renewal;

(iii) Who have been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from their status as a registered tax return preparer has been accepted by the Director of the Office of Professional Responsibility under § 10.61.

(5) Disqualified appraisers.

(6) Programs granted status as a qualified continuing education program.

* * * * *

(c) *Effective/applicability date.* This section is applicable 60 days after the date that final regulations are published in the **Federal Register**.

Christopher Wagner,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2010–20850 Filed 8–19–10; 11:15 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA–HQ–OPPT–2009–0112; FRL–8835–4]

RIN 2070–AD16

Testing of Certain High Production Volume Chemical Substances; Third Group of Chemical Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; announcement of meeting.

SUMMARY: EPA will hold a public meeting to give members of the public an opportunity to comment on a proposed rule under section 4(a)(1)(B) of the Toxic Substances Control Act (TSCA) entitled "Testing of Certain High Production Volume Chemicals; Third Group of Chemicals." The proposed rule, when finalized, would require manufacturers, importers, and processors of certain high production volume (HPV) chemical substances to conduct testing to obtain screening level data for health and environmental effects and chemical fate. Opportunity to present oral comment was provided in the proposed rule and in response to that opportunity, a request to present oral comments was received.

DATES: The meeting will be held on September 9, 2010, from 1 p.m. to 4 p.m.

Requests to participate in the meeting must be received on or before September 8, 2010.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as

much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, 1201 Constitution Ave., NW., Rm. 1117A, Washington, DC 20460-0001.

Requests to participate in the meeting, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0112, may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Paul Campanella or John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8091 or (202) 564–8173; e-mail address: *campanella.paul@epa.gov* or *schaeffer.john@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) or process any of the chemical substances that are listed in §799.5089(j) of the proposed test rule's regulatory text published in the **Federal Register** of issue of February 25, 2010 (75 FR 8575). Any use of the term "manufacture" in this document will encompass "import," unless otherwise stated. In addition, once the Agency issues a final rule, any person who exports, or intends to export, any of the chemical substances included in the final rule will be subject to the export notification requirements in TSCA 12(b)(1) and 40 CFR part 707, subpart D. Potentially affected entities may include, but are not limited to:

- Manufacturers (defined by statute to include importers) of one or more of the 29 subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.
- Processors of one or more of the 29 subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult either technical 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 ID number EPA–HQ–OPPT–2009–0112. 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. Background

In the **Federal Register** issue of February 25, 2010 (75 FR 8575) (FRL–8805–8), EPA published a proposed rule under TSCA section 4(a)(1)(B) to require manufacturers, importers, and processors of certain HPV chemical substances to conduct testing to obtain screening level data for health and environmental effects and chemical fate. EPA has preliminarily determined that: Each of the 29 chemical substances included in that proposed rule is produced in substantial quantities and that there is or may be substantial human exposure to each of them; there are insufficient data to reasonably determine or predict the effects on health or the environment of the manufacture, distribution in commerce, processing, use, or disposal of the chemical substances or of any combination of these activities; and the testing program proposed is necessary to develop such data. Data developed under the proposed rule, when finalized, will provide critical information about the environmental fate and potential hazards associated with the subject chemical substances. When combined with information about exposure and uses, these data will allow the Agency and others to evaluate potential health and environmental risks and to take appropriate follow-up actions.

In response to the proposed rule, EPA received a request to present oral comment from People for the Ethical Treatment of Animals (PETA). Written comments provided during the comment period for the proposed rule, including those requesting an opportunity for oral comment, are available and can be viewed in the docket under docket ID number EPA–HQ–OPPT–2009–0112.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical person listed under **FOR FURTHER INFORMATION CONTACT.** Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPPT–2009–0112, must be received on or before September 8, 2010.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

Dated: August 17, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–20845 Filed 8–20–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–51; FCC 10–88]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on ways to amend its rules to detect and prevent fraud and misuse in the provision of Video Relay Service (VRS). Because the VRS program has been subject to fraud and abuse, the Commission proposes these changes in order to deter the billing of illegitimate minutes to the Interstate Telecommunications Relay Service (TRS) Fund (Fund).

DATES: For issues regarding Location of VRS Call Centers, VRS Communications Assistants (CAs) Working from Home and Compensation, and Whistleblower Protections for VRS CAs and Other Provider Employees, comments are due on or before September 7, 2010, and reply comments due on or before September 16, 2010. For all other issues, comments are due on or before September 13, 2010, reply comments due on or before September 27, 2010. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (PRA), should be submitted on or before October 22, 2010.

ADDRESSES: You may submit comments, identified by [CG Docket No. 10–51 and/or FCC 10–88], by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 10–51.
- Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form < your e-mail address>." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8 a.m. to 7 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, or via e-mail to *fcc@bcpiweb.com*.

In addition, document FCC 10–88 contains proposed information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Cathy Williams, Federal Communications Commission via email at *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*, and to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167, or via email to *Nicholas_A._Fraser@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 559–5158 (voice and videophone), (202) 418–0431 (TTY), or e-mail at *Gregory.Hlibok@fcc.gov*. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918, or via the Internet at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Structure and Practices of the Video Relay Service Program*, Notice of Proposed Rulemaking (*2010 VRS Reform NPRM*), document FCC 10–88, adopted on May 24, 2010, and released on May 27, 2010, in CG Docket No. 10–51. In conjunction with the *2010 VRS Reform NPRM* in FCC 10–88, the Commission also issued a *Declaratory Ruling and Order* in CG Docket No. 10–51, published at 75 FR 39859, July 13, 2010 and 75 FR 39945, July 13, 2010.

The full text of document FCC 10–88 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *http://www.bcpiweb.com*. Document FCC 10–88 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/dro/trs.html#orders*. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments and reply comments must include a short and concise summary of the substantive discussion and questions raised in the *2010 VRS Reform NPRM*. The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. The Commission strongly encourages that parties track the organization set forth in this *2010 VRS Reform NPRM* in order to facilitate its internal review process. Comments and reply comments must otherwise comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules.

Pursuant to 47 CFR 1.1200 *et seq.*, this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. Public and agency comments are due October 22, 2010. Comments should address: (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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–xxxx.

Title: Structure and Practices of the Video Relay Service Program, CG Docket No. 10–51.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 13.

Number of Responses: 1,353.

Estimated Time per Response: 1 minute (.017 hours) to 40 hours.

Frequency of Response: One-time, monthly, quarterly, annual, and on occasion reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these proposed information collections is found at section 225 of the Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the ADA, Public Law 101–336, 104 Stat. 327, 366–69.

Total Annual Hourly Burden: 19,677 hours.

Total Annual Costs: $32,500.

Nature and Extent of Confidentiality: Much of the data that providers would have to submit pursuant to (A)–(C) in the Needs and Uses section, below, would fall under 47 CFR 64.604(c)(5)(iii)(I), pursuant to which the Fund administrator keeps all data obtained from contributors and TRS providers confidential and does not disclose such data in company-specific form unless directed to do so by the Commission.

Privacy Act Impact Assessment: No impacts.

Needs and Uses: In the *2010 VRS Reform NPRM,* the Commission seeks comment on ways to amend its rules to detect and prevent fraud and misuse in the provision of VRS. The *2010 VRS Reform NPRM* contains potential information collection requirements with respect to the following six of its proposals, all of which could further the aims of the *2010 VRS Reform NPRM.* Though the *2010 VRS Reform NPRM* emphasizes VRS, many of the proposals would also apply to other or all forms of TRS.

(A) Whether TRS providers should be required to automatically capture the conversation time, to the nearest second, for each call submitted for payment from the Fund.

(B) Whether the TRS rules should be amended to specifically require that relay providers submit specified call data information in order to be eligible for compensation from the Fund; and whether they should be amended to require that the data be submitted electronically and in a standardized format, and, if so, what the standardized format should be.

(C) Whether the Commission should require VRS providers eligible for compensation from the Fund that submit minutes for payment to file with the Commission and Fund administration on a quarterly basis a statement detailing the name and address of each call center the provider owns or controls (this would include subcontractors operating call centers and entities operating call centers for a subcontractor), the number of CAs and CA managers at the call center, and the name and contact information for the managers of the call center; and whether the Commission should require VRS providers to file an amendment to their most recent quarterly filing each time they open a new call center, close a call center, or the ownership or management of a call center changes, or changes to the list of providers whose calls are processed through the call center within 30 days of such an event.

(D) Whether all VRS providers should be required to make available their cost and demand data to the public.

(E) Whether Internet-based TRS providers should be required to retain their call detail records, other records that support their claims for payment from the Fund, and those records used to substantiate the costs and expense data submitted in the annual relay service data request form, for five years.

(F) Whether the CEO, CFO, or other senior executive of a relay service provider should be required to certify, under penalty of perjury, that: (1) Minutes submitted to the Fund administrator for compensation were handled in compliance with 47 U.S.C. 225 and the Commission's rules and orders, and are not the result of impermissible financial incentives, or payments or kickbacks, to generate calls, and (2) cost and demand data submitted to the Fund administrator related to the determination of compensation rates or methodologies are true and correct.

Synopsis

In the *2010 VRS Reform NPRM,* the Commission seeks comment on a range of issues affecting the provision of VRS and ways to detect and prevent fraud and misuse. The Commission's goal is to ensure that VRS continues to thrive as a highly functionally equivalent form of TRS, that it remains readily available to consumers (deaf and hearing alike), and that it continues to offer consumers high quality service. To reach this goal, however, the Commission must also ensure the integrity of the program. To that end, the Commission must make sure that its service and compensation rules do not result in or perpetuate unjustifiable payments to providers at American ratepayers' expense, the provision and billing of illegitimate calls, and the provision of service by unqualified providers or that is not in compliance with the service rules.

Location of VRS Call Centers

1. The Commission recognizes that some providers have established VRS call centers that are located outside the United States where ASL is generally not the primary form of sign language. The Commission is also concerned that VRS call centers outside the United States may lack appropriate supervision and otherwise not operate in compliance with the Commission's rules, and that these call centers may be (or have been) a source of fraud and or otherwise may not be handling legitimate VRS calls. The Commission therefore tentatively concludes that it will amend its rules to require that all VRS call centers be located in the United States, and seeks comment on this tentative conclusion.

VRS CAs Working From Home and Compensation

2. The Commission recognizes that some VRS CAs work from home, and that there are benefits that come with the flexibility of these arrangements.

This practice, however, raises concerns about whether the confidentiality of calls can be guaranteed and whether VRS CAs working from home can meet other mandatory minimum standards applicable to the provision of relay, such as the ability to handle emergency calls in accordance with the Commission's rules. The Commission seeks comment on how it can balance the goals of allowing CAs the convenience and flexibility that comes with working from home with the need to ensure the confidentiality of calls and that the Commission's mandatory minimum standards are met. The Commission also seeks comment on whether, if CAs may work from home, providers should be required to treat the homes of CAs who work from home as "call centers" for purposes of TRS administration.

3. The Commission also understands that some CAs have in the past been paid bonuses for working through scheduled breaks or working overtime in order to relay more minutes which may have resulted in schemes by CAs to initiate or participate in fraudulent VRS calls in order to receive such bonuses while still receiving necessary breaks. While the Commission believes the vast majority of CAs do not engage in this type of minute-pumping, the Commission seeks comment on whether such bonus schemes or any other type of compensation arrangement exist; and, if so, whether they incent CAs to arrange or cause to be arranged calls that would not otherwise be made, and what types of safeguards can be adopted to deter and prevent use of them.

Procedures for the Suspension of Payment

4. The TRS rules that authorize the Fund administrator to suspend or delay payments to a TRS provider if the provider fails to provide adequate verification of payment do not set forth in detail procedures for the suspension of payment and the resolution of whether certain minutes are legitimate and should be paid. The Commission therefore seeks comment on the adoption of new rules addressing the procedures for the suspension or withholding of payments to providers in circumstances where the Fund administrator reasonably believes that the minutes may not be legitimate or otherwise were not submitted in compliance with the TRS rules.

5. In ensuring that the providers must be afforded due process, the Commission tentatively concludes that the rules must, at a minimum: (1) Give timely notice to the providers of the minutes for which payment is being withheld, as well as the reason(s) for the withholding; (2) afford providers an opportunity to show why they believe the withheld minutes are in fact compensable; and (3) require that providers be given, in a timely fashion, a final determination of whether payment will be made for the disputed minutes with a supporting explanation. The Commission also tentatively concludes that the rules should place the burden on the provider to show that the minutes in question are compensable and were handled in accordance with the Commission's rules. The Commission seeks comment on these tentative conclusions, and on the nature of the showing providers should be required to make to establish that minutes submitted for payment are legitimate. Further, the Commission seeks comment on whether it should adopt new rules or modify existing rules to provide the TRS Fund administrator with the tools necessary to execute its administrative and auditing responsibilities.

Specific Call Practices

6. *International VRS* Calls. In the *VRS Declaratory* Ruling, published at 75 FR 25255, May 7, 2010, the Bureau confirmed that VRS calls that both originate and terminate outside the United States are not compensable. The Commission seeks comment on ways to address fraud and misuse associated with international VRS calls without undermining the use of VRS to make legitimate international calls. The Commission also seeks comment on the role of ten-digit numbering, registered locations, or other potential solutions (*e.g.*, particular software) to help ensure that VRS calls that terminate overseas are, in fact, legitimate TRS calls.

7. *VRS Calls in Which the Caller's Face Does Not Appear on the Screen; Use of Privacy Screens; Idle Calls.* Some VRS providers and VRS equipment permit a VRS caller to use a "privacy screen" during a call that prevents the VRS CA from viewing the caller. Although there may be legitimate reasons for a VRS CA or a caller to briefly use a privacy screen, in some instances it may be used to facilitate a call solely intended to generate minutes. The Commission therefore seeks comment on how it might amend the TRS rules to address the use and misuse of privacy screens. The Commission also specifically seeks comment on its tentative conclusion that if a caller is away from the call or unresponsive for longer than two minutes, the CA should disconnect the call, and on what the appropriate time period a call may be idle is before being disconnected. A VRS call placed on hold by a business would not be considered "idle," even if the hold time exceeds two minutes.

8. *Calls Involving Remote Training.* The Commission recognizes that a significant number of VRS minutes submitted for compensation in recent months are attributable to remote training. To the extent that VRS calls that enable a person to participate in remote training using a VRS CA are, in fact, being used as a substitute for in-person interpreting or Video Remote Interpreting (VRI) services, the Commission has already made clear that this would be an improper use of VRS. The Commission seeks comment on its tentative conclusion that, despite its prior finding that calls made for the purpose of generating compensable minutes as a source of provider revenue are not compensable from the Fund, a rule specifically barring compensation for remote training calls initiated or promoted by or on behalf of a provider would serve as an additional deterrent against fraud and misuse of the Fund.

Detecting and Stopping the Billing of Illegitimate Calls

9. *Automated Call Data Collection.* The Commission seeks comment on its tentative conclusion that the TRS rules should be modified to make clear that providers must automatically capture the conversation time, to the nearest second, for each call submitted for payment from the Fund, which the Commission expects would reduce opportunities for fraud and the erroneous submission of minutes for payment.

10. *Data Filed with the Fund Administrator to Support Payment Claims.* In 2008, the Fund Administrator instructed VRS providers that, in addition to the speed of answer compliance data they were already submitting, monthly minutes of use submitted for payment must be supported by the following call data records: (1) The call record ID sequence; (2) Communications Assistant ID; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number or IP address; (6) outbound telephone number or IP address; (7) total conversation minutes; and (8) total session minutes.. The Commission seeks comment on its tentative conclusion that the TRS rules should be amended to specifically require the filing of this call data information as a functional TRS mandatory minimum standard that providers must meet to be eligible for compensation from the Fund, because review of this information is essential to detecting and deterring fraud and the

billing of illegitimate calls. The Commission also seeks comment on any other call record information it should require providers to submit to the Fund administrator to support their claims for payment, and on its tentative conclusion that the TRS rules should be amended to require that all this data be submitted electronically and in a standardized format.

11. *Requiring Providers to Submit Information About New and Existing Call Centers.* The Commission seeks comment on its tentative conclusions that: (1) It should amend the TRS mandatory minimum standards to require VRS providers eligible for compensation from the Fund that submit minutes for payment to file with the Commission and Fund administrator on a quarterly basis a statement detailing the name and address of each call center the provider owns or controls, the number of CAs and CA managers at the call center, and the name and contact information for the managers of the call center; and (2) that it will require VRS providers to file an amendment to their most recent quarterly filing each time they open a new call center, close a call center, or the ownership or management of a call center changes, or changes to the list of providers whose calls are processed through the call center. The Commission further proposes that such amendments be required to be filed within thirty days of such an event. This information will enable the Commission and Fund administrator to better oversee compliance with Commission rules to ensure the compensability of submitted minutes as well as to ensure that sub-contractors are providing the quality of service the Commission's rules require.

12. *Requiring Service to be Offered in the Name of the Provider Seeking Compensation from the Fund; Revenue Sharing Schemes.* The Commission's rules permit providers eligible for compensation from the Fund to subcontract with other entities for actual provision of service. Although the eligible provider is responsible for ensuring that such calls billed to the Fund are legitimate, in some cases it is possible that the eligible provider exercises very little oversight over the call handling operations. In other cases, arrangements have been made in order to facilitate fraud. One VRS provider proposes that the Commission adopt a rule stating that providers cannot be compensated from the Fund unless the provider seeking compensation "clearly identified itself to the calling parties at the outset of the calls as the TRS provider for those calls." Another VRS provider proposes that the Commission altogether prohibit uncertified entities from billing the TRS Fund through certified providers. The Commission seeks comment on these proposals and on other ways it can ensure that the entities that actually relay calls are accountable for compliance with the Commission's rules.

13. *Whistleblower Protections for VRS CAs and Other Provider Employees.* The Commission recognizes that CAs and other employees of providers are often in the best position to detect possible fraud and misconduct by the provider, but that employees are often reluctant to report possible wrongdoing because they fear they may lose their job or be subject to other forms of retaliation. Given recent evidence of fraud and the billing of illegitimate VRS minutes, the Commission seeks comment on its tentative conclusion that it should adopt a specific whistleblower protection rule for the employees and subcontractors of TRS providers, and on what the scope and contents of such a rule should be.

14. *Transparency and the Disclosure of Provider Financial and Call Data.* Currently, the Commission addresses provider cost and demand data only in the aggregate or in some other way that does not reveal the individual data of a particular provider. The Commission seeks comment on whether it should require that all VRS provider cost and demand data be made available to the public and, if so, how such a requirement should be implemented. The Commission further seeks comment on how it might balance the legitimate need for transparency of provider costs with any legitimate interest in keeping that information (or some portion of it) confidential. The Commission requests that commenters favoring disclosure specifically address the scope of such requirement, how the data should be made public, and any exceptions or limits to a rule requiring disclosure of provider specific cost and demand data.

15. *Provider Audits.* The Commission is authorized to suspend payment to providers who do not submit to audits. The Commission seeks comment on whether it should amend the TRS mandatory minimum standards to include more specific and stringent auditing rules in order to better safeguard the integrity of the Fund. Commenters favoring such rules should address the scope and frequency of such audits.

16. *Record Retention.* The Commission recognizes that to detect and deter fraud or other call or billing irregularities it must have access to the underlying call data. The Commission seeks comment on its tentative conclusion that it should amend the TRS rules to require Internet-based TRS providers to retain their call detail records, other records that support their claims for payment from the Fund, and those records used to substantiate the costs and expense data submitted in the annual relay service data request form, for five years.

17. *Provider Certification Under Penalty of Perjury.* In the Order portion of document FCC 10–88, the Commission adopts an interim rule requiring the CEO, CFO, or other senior executive of a relay service provider to certify, under penalty of perjury, that: (1) Minutes submitted to the Fund administrator for compensation were handled in compliance with section 225 of the Communications Act of 1934, as amended, and the Commission's rules and orders, and are not the result of impermissible financial incentives, or payments or kickbacks, to generate calls, and (2) cost and demand data submitted to the Fund administrator related to the determination of compensation rates or methodologies are true and correct. *See* 75 FR 39859, July 13, 2010. The Commission seeks comment on its tentative conclusion that it should adopt these rules permanently.

Initial Regulatory Flexibility Certification

18. The Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(1). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

19. In the *2010 VRS Reform NPRM*, the Commission reaches tentative conclusions on a range of issues affecting the provision of VRS and ways to detect and prevent fraud and misuse in the VRS program. Specifically, the Commission tentatively concludes that: All VRS call centers must be located in the United States; VRS CAs must work in a centralized call center where other

personnel are present, including other CAs and supervisors; the Commission should adopt new rules, affording providers due process, addressing procedures for the suspension or withholding of payments to providers in circumstances where the Fund Administrator reasonably believes that the minutes may not be legitimate or otherwise were not submitted in compliance with the TRS rules, but placing the burden on the provider to show that the minutes in question are compensable and were handled in accordance with the TRS rules; VRS calls that originate or terminate overseas shall not be compensable from the Fund; a CA should disconnect a VRS call in which the caller's face does not appear on the screen (including when the caller is using a "privacy screen"), or where the call is "idle," for more than two minutes; a rule specifically barring compensation for remote training calls initiated or promoted by or on behalf of a provider would serve as an additional deterrent against fraud and misuse of the Fund; providers must use automated, rather than manual, methods to capture a TRS call's conversation time, to the nearest second, for each call submitted for payment from the Fund; the TRS rules should specifically require that providers file certain call data information in order to eligible for compensation from the Fund, and providers must file it electronically and in a standardized format; providers must file with the Commission and Fund administrator on a quarterly basis a statement detailing the name and address of each call center the provider owns or controls (including subcontract arrangements), as well as various information concerning the management of such call centers; the Commission should adopt a permanent rule requiring the CEO, CFO, or other senior executive of a provider submitting data to the Fund administrator to make various certifications under penalty of perjury; the Commission should adopt specific whistleblower protection rules for the employees and subcontractors of TRS providers; and Internet-based TRS providers must retain their call detail records, and other records to support their claims for payment from the Fund, for five years.

20. The *2010 VRS Reform NPRM* also seeks comment on whether the Commission should prohibit "white-label" Internet-based TRS services—where non-certified providers offer service and bill the Fund through certified providers—and on other ways that the Commission can ensure that the entities that actually relay calls are accountable for compliance with the Commission's rules. In addition, it seeks comment on whether—and if so, how—VRS provider cost and demand data should be made available to the public, and whether the Commission should adopt more specific and stringent auditing rules in order to better safeguard the integrity of the Fund.

21. With regard to whether a substantial number of small entities may be affected by the requirements proposed in the *2010 VRS Reform NPRM*, the Commission notes that, of the fourteen providers affected by the *2010 VRS Reform NPRM*, no more than five meet the definition of a small entity. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. Currently, fourteen providers receive compensation from the Interstate TRS Fund for providing any form of TRS. Because no more than five of the providers that would be affected by the *2010 VRS Reform NPRM*, if adopted, are deemed to be small entities under the SBA's small business size standard, the Commission concludes that the number of small entities potentially affected by our proposed rules is not substantial. Moreover, given that all providers potentially affected by the proposed rules, including those deemed to be small entities under the SBA's standard, would be entitled to receive prompt reimbursement for their reasonable costs of compliance, the Commission concludes that the *2010 VRS Reform NPRM*, if adopted, will not have a significant economic impact on these small entities.

22. Therefore, the Commission certifies that the proposals in the *2010 VRS Reform NPRM*, if adopted, will not have a significant economic impact on a substantial number of small entities.

23. The Commission will send a copy of the *2010 VRS NPRM*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

Pursuant to sections 1, 4(i) and (o), 225, 303(r), 403, 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 225, 303(r), 403, 554(g), and 606, document FCC 10–88 is adopted.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of document FCC 10–88, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Claims, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

2. Section 64.604 is amended by adding paragraphs (a)(3)(ix), (a)(6), (a)(7), and (b)(4)(iii), and by revising paragraph (c)(5)(iii)(E), to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(3) * * *

(ix) Relay calls that enable a person with hearing or speech disability to participate in a remote training program, made available to the public or to an entity's employees, do not fall within the scope of this subpart.

* * * * *

(6) In addition to those standards set forth above, Internet-based TRS providers shall be subject to the following standards:

(i) *Automated call data collection.* For each Internet-based TRS call, providers must automatically record session and conversation time to the nearest second.

(ii) *Revenue sharing agreements.* The administrator shall not compensate for minutes resulting from an Internet-based TRS call unless the entity seeking compensation from the Fund for such minutes clearly identified itself to the calling parties at the beginning of the call as the TRS provider for the call.

(iii) *Whistleblower protections.* Providers shall permit any employee, agent, or contractor to disclose to a designated manager any known or suspected violations of FCC rules, or any other activity that the reporting person believes to be unlawful, wasteful, fraudulent, or abusive, or that otherwise could result in the improper

billing of minutes to the Interstate TRS Fund. Providers must make available at least one means by which such disclosure may be made anonymously. Providers must promptly investigate any report of wrongdoing and, when warranted, take appropriate corrective action. Providers may not discipline any employee, agent, or contractor solely for reporting under this provision. Providers shall also inform all employees, agents, and contractors that they may directly contact the Commission's Office of Inspector General to report wrongdoing.

(iv) *Record retention.* Providers shall retain their call detail records for five years from the date of service, and shall make such records available to the Commission or administrator upon request.

(7) In addition to those standards set forth above, Video Relay Service providers shall be subject to the following standards:

(i) *Idle time or no face on screen.* If either party to a VRS call is away from the call, or otherwise unavailable or unresponsive, for more than two minutes the CA may disconnect the call, except when the call has been placed on hold by a business. If at any time during a VRS call a VRS CA is confronted with only a blank screen (*e.g.*, a privacy screen), or a screen that does not display the face of the video caller, the CA may disconnect the call if the video caller's face does not reappear within two minutes.

(ii) *Call center information.* VRS providers shall file quarterly reports with the Commission and the administrator by March 31, June 30, September 20, and December 31 each year stating the name and address of each call center the provider owns or controls (including call centers owned or operated by subcontractors or entities operating calls centers for a subcontractor), the number of CAs and CA managers at each call center, and the name and contact information for the key managers at each call center. VRS providers shall file an amendment to their most recent quarterly filing within 30 days of opening a call center, closing a call center, or changing the ownership or management of a call center.

* * * * *

(b) * * *

(4) * * *

(iii) *Location of call centers.* VRS call centers must be located in the United States.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(E) *Payments to TRS providers.* TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. In addition to the data required under paragraph (c)(5)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. These reports shall include the call record ID sequence, CA ID, session start and end times, conversation start and end times, incoming telephone number or IP address for Internet-based TRS service not subject to the numbering requirements under § 64.611, outbound telephone number or IP address for Internet-based TRS service not subject to the numbering requirements under § 64.611, total conversation minutes, and total session minutes. In addition, VRS and IP Relay providers shall include in their reports speed of answer compliance data. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. The administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in this section, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with parts 32 and 36 of this chapter procedures reasonably tailored to meet the needs of TRS providers. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the Fund administrator. The Fund administrator shall have authority to audit TRS providers reporting data to the administrator. The formulas should appropriately compensate interstate providers for the provision of VRS, whether intrastate or interstate.

* * * * *

[FR Doc. 2010–20615 Filed 8–20–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Docket No. 0906041Q11–91012–01

RIN 0648–AX91

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Halibut and Sablefish Individual Fishing Quota Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to modify the Individual Fishing Quota (IFQ) Program for the Fixed-Gear Commercial Fisheries for Pacific Halibut and Sablefish in waters in and off Alaska (IFQ Program) by revoking quota share (QS) that have been inactive since they were originally issued in 1995. Inactive QS are those held by persons that have never harvested their IFQ and have never transferred QS or IFQ into or out of their accounts.

This action is necessary to achieve the catch limit from the halibut fisheries and optimum yield from the sablefish fisheries in Alaska in accordance with National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act and results in more efficient use of these species as supported by National Standard 5. The intended effect is to promote the management provisions in the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and the Northern Pacific Halibut Act of 1982.

DATES: Comments must be received by 5 p.m., local time, on September 22, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional

Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–AX91 (PR), by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*.
- Fax: (907) 586–7557, Attn: Ellen Sebastian.
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review and Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action may be obtained from *http://www.regulations.gov*, or from the Alaska Region website at *http://alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Alaska Region, e-mailed to *David_Rostker@omb.eop.gov*, or faxed to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Halibut Management

Management of the commercial fishery for Pacific halibut (Hippoglossus stenolepis) in and off Alaska is based on an international agreement between Canada and the United States. This agreement, titled "Convention Between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed in Ottawa, Canada, on March 2, 1953, and amended by the "Protocol Amending the Convention," signed in Washington, D.C., March 29, 1979. The Convention is administered by the International Pacific Halibut Commission (IPHC) and is given effect in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act).

Generally, the IPHC surveys the Pacific halibut stock and develops fishery management regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the U.S. Secretary of State with concurrence from the Secretary of Commerce (Secretary). NMFS publishes approved regulations in the **Federal Register** as annual management measures pursuant to 50 CFR part 300.62. NMFS published the current annual management measures on March 18, 2010 (75 FR 13024). Federal regulations governing the halibut fisheries appear at 50 CFR part 300, subpart E.

The Halibut Act (section 773(c)) also authorizes the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations that are in addition to, and not in conflict with, approved IPHC regulations for U.S. Convention waters. Such regulations may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority most notably in the development of the Individual Fishery Quota (IFQ) Program codified at 50 CFR part 679.40.

Sablefish Management

Federal management of the commercial fishery for sablefish (Anoplopoma fimbria) is authorized by the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act) and implemented by regulations at 50 CFR part 679.

IFQ Program

The Council and NMFS developed the IFQ Program for the halibut and sablefish fixed-gear fishery in waters in and off Alaska. The IFQ Program limits access to the fisheries to persons holding QS. Annually, the amount of halibut and sablefish that each QS holder may harvest is calculated and issued as IFQ. The Council adopted the IFQ Program in 1991 under the authority of the Halibut Act and the Magnuson-Stevens Act. The preamble to the proposed rule, published December 3, 1992 (57 FR 57130), provides details of the conservation and management background leading to the Council's adoption of the IFQ Program. NMFS implemented the program on November 9, 1993 (58 FR 59375) through Federal regulations at 50 CFR part 679. Fishing under the IFQ Program began on March 15, 1995.

The IFQ Program is designed to maintain the social character and economic benefits of the commercial, fixed-gear fisheries that Alaskan coastal communities rely on as a source of revenue. The Council and NMFS intend the IFQ Program to provide economic stability for the Pacific halibut and sablefish commercial fisheries and improve long-term productivity of the resources. The IFQ management approach extended the fishing season, and harvests of the annual total allowable catch (TAC) now occur throughout most of the year. The season length and known amount of QS let fishermen set their own pace and their fishing effort to focus more attention on safety, operational efficiency and product quality. The IFQ program also allows fishermen to transfer QS, giving them flexibility to determine what type of investment to make based on when, where, and how much halibut and sablefish they can harvest.

Initial Assignment and Recipients of QS

Quota shares were initially assigned to persons that owned vessels or held a vessel lease and made at least one landing in a regulatory area in any one of the years 1988, 1989, or 1990. The intent was to assign initial shares only to those fishermen then currently active in the halibut and sablefish fixed-gear fisheries. The amount of QS a person received was based on his or her documented, historical catch for 5 out of 6 years (1985 through 1990) for sablefish, and for 5 out of 7 years (1984 through 1990) for halibut. This allowed a person to choose the best 5 years to calculate his or her assignment. The number of QS units issued to each person was based on each person's selection of years of landings.

Persons holding QS for an area have harvesting privileges for an amount of halibut or sablefish that is derived annually from their QS holdings in that area and authorized on their IFQ permit. The specific amount (in pounds) is determined by the number of QS units held for that species, the total number of QS units issued for that species in a

specific regulatory area, and the TAC of the species allocated for IFQ fisheries in a particular year. To simplify the language in the remainder of this document, the concept of QS units and associated IFQ pounds issued annually is referred to singularly as QS except in reference to specific Council direction and in the draft regulations.

One design feature of the IFQ Program requires IFQ permit holders to be on board the vessel to maintain a predominantly "owner-operated" fishery with a narrow exemption for initial recipients of QS. Initial recipients of catcher vessel QS may be absent from a vessel conducting IFQ halibut or sablefish fishing, provided the QS holder can demonstrate at least a minimum specified level of ownership of the vessel that harvests the IFQ halibut or sablefish, as well as representation on the vessel by a hired master. This exception allows fishermen-who historically operated their fishing businesses using hired masters before the implementation of the IFQ Program-to retain the flexibility of using hired masters under the IFQ Program.

Need for Action

In June 2006, the Council recommended removal of initially allocated halibut and sablefish QS from QS holders that had never harvested IFQ halibut or IFQ sablefish, or that had never transferred any QS or IFQ since initially receiving the QS. Quota share would be considered inactive if the QS and the associated annual allocation of IFQ pounds have been neither transferred nor fished.

Inactive QS exists for a variety of reasons. The initial allocation of halibut or sablefish QS was made to qualified persons according to regulations at § 679.40(a). These regulations specified no minimum pounds of halibut or sablefish to be harvested during the respective halibut and sablefish base periods (1984–1990 for halibut and 1985–1990 for sablefish), but one catch landing had to occur in any one of the last 3 years of the base period. Hence, the calculation of initial QS for some qualified persons resulted in their receiving very small QS allocations. The IFQ poundage derived from these allocations of QS also is small: in some cases summing to fewer pounds than a whole fish. The recipients of these small QS allocations have presumably elected not to participate actively in the IFQ fisheries. Though, persons holding inactive QS have had the same opportunity as persons with active QS to participate in the IFQ program by fishing and transferring QS and IFQ. Other persons holding inactive QS are no longer in the commercial fishing industry, are deceased, or have been unable or unwilling to divest or otherwise transfer their inactive QS.

The existence of inactive QS was not specifically addressed during the implementation, development or maintenance of the IFQ program. As a result, several hundred accounts with very small amounts of inactive QS remain in the IFQ Program database. Even though the QS is inactive, NMFS must perform routine administrative tasks to process, monitor, and maintain data on the inactive QS, including recordkeeping, regular correspondence with QS holders, and monthly and annual reporting. IFQ permit holders are responsible for the costs and reimburse NMFS for those costs through the IFQ cost recovery program (50 CFR 679.45). When inactive QS are held and not harvested, active IFQ holders pay slightly higher fees for the IFQ Program because IFQ cost recovery fees apply only when IFQ species are landed.

As a result of the inactive QS, some IFQ will not be harvested and a portion of the TAC will remain unharvested. This reduces economic and social benefits from QS harvest typically realized by fishery dependent businesses and the public. Unused IFQ also deprives consumers of product. Holding inactive QS prevents access to halibut and sablefish QS by persons qualified to fish the QS, and limits the ability of fishermen interested in entering the IFQ Program or expanding their QS holdings. Hence the inactive QS prevent the IFQ fisheries from optimizing yield.

Proposed Action

This action proposes to revoke inactive halibut and sablefish QS from the QS pools. The portion of the annual halibut and sablefish TACs represented by the revoked QS and associated IFQ would be distributed among IFQ permit holders in an amount proportional to their IFQ allocation. Alternatively, if a permit holder requests NMFS not to revoke his or her inactive QS, then NMFS would assign an active status to that QS and the associated IFQ would continue to be issued annually.

All halibut and sablefish QS identified as inactive are held by initial recipients of QS. Revoking QS as proposed would not change the initial recipient status of the QS holder. Hence, if a person was initially allocated QS that would be revoked under this action, and then subsequently acquires new QS in the future, that person still would retain the benefit of being an initial recipient of QS for purposes of retaining the flexibility of using a hired master.

Although the administrative burden for the retained QS would not be reduced, annual administrative tasks and costs for managing revoked QS would be eliminated. Reducing the administrative burden would allow for more efficient use of IFQ Program resources, and, for the sablefish fisheries, is consistent with National Standard 5. Revoking inactive QS also would reduce costs and improve operational flexibility of active program participants. The change in distribution of IFQ allows broader opportunity to achieve the catch limit in halibut fisheries and optimum yield from the sablefish fisheries as required by National Standard 1 of the Magnuson-Stevens Act.

The Council recommended this proposed action as part of a multi-part IFQ regulatory amendment package. NMFS subsequently separated the Council's multiple recommendations into independent regulatory amendment packages to better address priority actions in a timely manner. This proposed rule is the final one of the series recommended by the Council in 2006. As a result, several years have passed between the Council's action notifying the public of the pending change to the IFQ Program and publication of this proposed rule. During these years, NMFS followed the Council's recommendation to contact persons holding inactive halibut or sablefish QS by mail and to communicate that NMFS is pursuing rulemaking that, if implemented, would require persons to notify NMFS in writing that they do not want their inactive QS and associated annual IFQ revoked. NMFS notified persons with inactive QS of the status of the proposed action in letters sent by direct mail in January 2008 and in March 2009. The notification process was productive, stimulating transfers of inactive QS that resulted in almost a 50–percent decline in the number of persons holding inactive halibut and sablefish QS. An additional recommendation of the Council to provide broad public notice of the Council's intent to withdraw inactive QS is addressed with publication of this proposed rule in the **Federal Register**.

Council Consideration

The RIR/IRFA prepared for this action (see ADDRESSES) reports that when the Council initially considered the proposal in June 2006, 534 persons held inactive QS for halibut, which yielded roughly 280,000 pounds (127 mt) of IFQ. Inactive sablefish QS was held by

seven persons and yielded roughly 16,000 pounds (7.3 mt) of IFQ that year. Given this amount of inactive QS and associated IFQ, the Council recommended a lottery for a one-time redistribution of inactive QS if the total amount of inactive QS is more than the number of QS units equivalent to 50,000 pounds (22.7 mt) of halibut IFQ for all IPHC regulatory areas in the year of the lottery; therefore, the Council's secondary recommendation for a lottery was conditioned on the total amount of inactive QS that could be revoked being greater than that which would yield 50,000 pounds (22.7 mt) of halibut IFQ for all IPHC regulatory areas in the year of the lottery.

NMFS reported to the Council at its December 2008 meeting that the amount of IFQ associated with the number of inactive halibut QS fell below the 50,000 pound (22.7 mt) threshold for implementing a lottery to redistribute the inactive QS. At that time, 278 persons held inactive QS: 275 held halibut QS, and 4 held sablefish QS (one person held QS for both species). Using 2008 ratios, this inactive QS represented 34,719 halibut IFQ pounds (15.8 mt) and 924 sablefish IFQ pounds (0.4 mt). During 2006–2008, the total number of unique, inactive QS holders declined 49 percent. Assuming year-specific ratios of QS units to IFQ pounds, the amount of change in inactive IFQ pounds of halibut and sablefish can be generally represented as a decline of 87.6 percent and 94.2 percent, respectively. The Council noted the extent of QS consolidation and notified the public of its intention to review its preferred alternative during the February 2009 Council meeting.

In February 2009, the Council reaffirmed its preferred alternative to remove inactive halibut and sablefish QS. It acknowledged that the amount of inactive halibut QS had consolidated below the 50,000 (22.7 mt) pound threshold level the Council previously identified to implement a lottery for the redistribution of inactive QS; therefore, the proposed action was narrowed to exclude the lottery recommendation and to revoke inactive QS only when no action is taken by the QS holder. Action by the QS holder means that the QS holder must notify NMFS in writing to specifically request that their inactive QS not be revoked or present evidence that the QS should not have been determined inactive.

In the time since the Council discussed this issue at the beginning of 2009, the number of persons holding inactive QS has declined further. As of December 31, 2009, 242 permit holders held inactive QS; 240 held halibut QS, and three held sablefish QS (one person held QS for both species). Using 2009 ratios, the amount of inactive QS held represent 24,299 pounds (11.02 mt) of halibut IFQ and 731 pounds (0.33 mt) of sablefish IFQ. Between December of 2008 and December of 2009 the total number of persons holding inactive QS declined 13 percent. The ratio of QS units to IFQ pounds is similar in 2008 and 2009, allowing direct comparison of the IFQ pounds of inactive QS between the two years. In the 12 months between December 2008 and 2009, the amount of inactive halibut QS declined 30 percent and the amount of inactive sablefish QS declined 21 percent.

Official Notice and Record

If the proposed rule is approved by the Secretary of Commerce and implemented, NMFS would send each holder of inactive QS a "Notice of Determination of Quota Share Inactivity" (Inactive QS Notice). The Inactive QS Notice would be sent by certified mail to the address of record at the time the Inactive QS Notice is sent (50 CFR 679.43(e)). NMFS bears no responsibility if the Inactive QS Notice is sent to the address of record and is not received because NMFS has not been notified of the change in the address of record. The Inactive QS Notice would describe the inactive status of the QS, identify the IFQ permit holder, and provide the date the authorized 60–day response period ends.

NMFS would issue an Inactive QS Notice alerting a holder of inactive halibut or sablefish QS that their QS is considered inactive based on records maintained by NMFS indicating that initially issued QS was never used to land IFQ halibut or IFQ sablefish or to transfer any QS or IFQ to or from another person. The official record of an IFQ halibut or IFQ sablefish landing would contain the IFQ permit number to which the IFQ landing would have been credited. The number and amount of landings would be based only on legally submitted harvest documentation. This documentation must include a state catch report, a Federal catch report, or other valid documentation that indicates the amount of IFQ halibut or IFQ sablefish harvested, the IPHC or groundfish reporting area in which the IFQ pounds were harvested, the vessel and gear type used for the harvest, and the date of harvesting, landing, or reporting. Federal catch reports are production reports required under 50 CFR 679.5. NMFS has used production reports only for catcher/processors to document IFQ landing and active QS. State catch reports are Alaska, California, Oregon, or Washington fish tickets. State fish tickets are used by NMFS only for catcher vessels as data sources to determine the specific amount and location of landings that would demonstrate active QS.

NMFS presumes that the official record data sources are correct. In the case where a person believes the official record is incorrect, his or her claim can be raised in a separate correspondence to NMFS, Restricted Access Management Program, Juneau, AK (see ADDRESSES).

Options for Persons Holding Inactive QS

A person that holds inactive QS would have two options to respond to receipt of an Inactive QS Notice. During the 60–day response period specified in the Inactive QS Notice, the person holding the inactive QS could choose to (1) do nothing, thereby resulting in revocation of the inactive QS; or (2) request in writing that the inactive QS not be revoked. Alternatively, a person holding inactive QS could exercise options that have existed since the beginning of the IFQ Program in 1995 to either transfer some or all of the inactive QS, or harvest halibut or sablefish based on IFQ derived from the inactive QS. These options are further explained below.

First, a person holding inactive QS could choose to do nothing. That person's inactive QS would be revoked at the end of the 60–day period specified in the Inactive QS Notice. Revoked QS would cease to exist in the QS pool and would not receive an annual allocation of IFQ poundage for IFQ halibut or IFQ sablefish. Any IFQ derived from the inactive QS also would be revoked at the time that the inactive QS are revoked. After inactive QS are revoked, the previous holder of those QS could participate in the IFQ halibut or IFQ sablefish fisheries only if they receive QS by transfer.

Second, a person with inactive QS could choose to retain or activate the QS by notifying NMFS in writing that he or she does not want the inactive QS revoked. Such written requests would have to be postmarked within the 60–day response period specified in the Inactive QS Notice. This response would allow NMFS to activate the otherwise inactive QS by the QS holder's demonstration of at least minimal activity in the IFQ Program. NMFS would allocate IFQ based on the activated QS as it has done since the beginning of the IFQ Program, and the holder of such QS would continue to benefit from the initial recipient

privileges specified in the regulations implementing the IFQ Program (§§ 679.41 and 679.42). Moreover, the IFQ halibut and IFQ sablefish harvesting privilege for such a QS holder would continue as it does for all other QS holders.

The options to activate otherwise inactive QS by either transferring some or all of the inactive QS, or harvesting halibut or sablefish based on IFQ derived from the inactive QS, would continue to be available to a person holding inactive QS through the end of the 60–day response period specified in the Inactive QS Notice. No additional period of time is proposed to demonstrate these activities because the person holding the inactive QS has already had an opportunity to demonstrate such activity since the beginning of the IFQ Program in 1995. Further, the two information letters sent by NMFS to persons holding inactive QS notifying them of this proposed action successfully alerted a significant number of persons holding inactive QS as demonstrated by comparison of IFQ program participation over time as summarized under Council consideration above.

A person holding inactive QS who is unable to respond to the Inactive QS Notice from NMFS within the 60–day response period may appeal to NMFS to submit his or her response late to the NMFS Alaska Region Office of Administrative Appeals pursuant to § 679.43. As a practical matter, any other challenge of the Inactive QS Notice within the 60–day response period would be considered as a written request to not revoke the inactive QS. As such, a challenge would activate the otherwise inactive QS by demonstrating a reaction and therefore at least minimal activity in the IFQ Program.

Written Response

The Inactive QS Notice provides the person holding the inactive QS with the opportunity to respond in writing to NMFS within a single 60–day response period, from the date that the Inactive QS Notice is sent, and clearly request the QS and IFQ remain active. Response will only be accepted by mail to simplify processing of responses. E-mail, fax or any other form of response is not acceptable. The Inactive QS Notice would be constructed to allow the bottom half of the document to be separated and used as a mail-in response form to NMFS indicating whether the holder of the inactive QS wants to retain the QS. The following written statement would be printed on the mail-in response form as an expression of request to not revoke the inactive QS: "I [print first name, middle initial and surname] request that NMFS not revoke my quota share authorized by my signature on this date. Signed [Write signature]. Dated [Enter the current date]." A holder of inactive QS may also respond by mail without using the provided form, but must include all the same specific information, names, signatures and dates as included on the mail-in response form. Once the completed mail-in form or other response statement is received in the mail by NMFS and verified correct, a letter of acknowledgement will be issued to the person identified as the holder of the inactive QS or his or her legal representative. The letter would serve as final agency action advising that QS would be 'active' and no further response by the person holding the inactive QS or NMFS would be required.

Previous Response to NMFS

NMFS previously sent QS holders two informational letters noticing them of this proposed action to revoke inactive QS. A QS holder who previously responded to NMFS letters that still holds inactive QS must resubmit a response to NMFS by mail within the authorized 60–day response period or NMFS would revoke the inactive QS. Any previous request to NMFS to activate inactive QS is not sufficient for NMFS to change that QS status. A written response is required within the 60–day response period specifically provided by the Inactive QS Notice. If a response was submitted to NMFS on the subject of inactive QS and the IFQ permit holder has since had the inactive QS officially activated by completing a transfer or fishing the IFQ, then no further response is required. If an IFQ permit holder previously responded to NMFS letters about inactive QS and requested he or she be able to keep the inactive QS, then the IFQ permit holder must submit that request to NMFS again within the 60–day response period provided by the Inactive QS Notice or the inactive QS will be revoked. If a person holding inactive QS fails to notify NMFS of his or her interest to activate their QS within the 60–day response period, then NMFS would revoke the inactive QS.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Halibut Act, the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, 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).

The IRFA prepared for this proposed action assesses the potential adverse economic impacts each alternative would have on directly regulated small entities if the proposed regulations were adopted to revoke inactive QS. A business is considered a small entity if annual gross revenues are less than $4.0 million. NMFS defines all halibut and sablefish vessels as small businesses, for the purpose of this analysis. The number of small entities operating as fishing vessels in the IFQ fisheries may be deduced from the restrictions placed on the amount of annual IFQ that may be landed from any individual vessel. In 1995, the year the IFQ Program began and the year before the Council recommended this proposed action, a total of 2,057 vessels participated in IFQ halibut fisheries in all areas, and a total of 616 vessels participated in the IFQ sablefish fisheries in all areas combined. In late 2008, when the Council chose to revisit this action, a total of 1,156 vessels participated in the IFQ halibut fishery, and 362 vessels participated in the IFQ sablefish fishery in all areas. The total number of vessels includes

individual vessels that participated in the fisheries in any regulatory area.

The purpose of amending the regulations for the halibut and sablefish IFQ Program is to improve program administration, reduce costs and improve operational flexibility of program participants, and help achieve optimum yield. Inquiries about the cost of the IFQ Program and access to inactive QS provided impetus for the Council to consider this proposed action. There is no regulatory authority for NMFS to revoke QS or accept relinquishment of QS amounts that are impractical or uneconomical to fish; instead, QS may be voluntarily transferred or fished.

The Council initiated analysis of four issues pertaining to the IFQ Program for the fixed-gear halibut and sablefish fishery in 2006. An RIR/IRFA was provided for public review May 12, 2006 that analyzed each issue in one, multi-part, IFQ regulatory amendment package. This proposed action on the issue of inactive QS was referred to as Action 3 in the 2006 RIR/IRFA. The Council reviewed the status quo alternative of not revoking inactive halibut or sablefish QS, and two alternatives to withdraw inactive QS. Alternative 1 is the no action alternative and would not change any economic impacts on directly regulated small entities. Under the status quo, holders of inactive QS would have no option to relinquish their inactive halibut or sablefish QS. Federal regulations do not provide for the voluntary removal of QS other than through transfer.

Alternative 2 would revoke all inactive halibut and sablefish QS. Inactive QS is initially allocated QS that has never been used to harvest halibut or sablefish and has never been transferred in to or out of the initial QS account. Only persons who do not hold active QS would be affected. Persons that transferred some or all of their halibut or sablefish IFQ but never harvested any IFQ halibut or IFQ sablefish would not be subject to revocation of their QS under this alternative.

Alternative 3, recommended by the Council, would revoke all inactive QS unless the holder of the inactive QS notifies NMFS of his or her interest to retain their inactive QS. Alternative 3 also provides for a lottery to redistribute revoked QS to eligible persons unless the amount of inactive QS available to be revoked is below a threshold of QS units equal to 50,000 pounds (22.7 mt) for all IPHC regulatory areas.

NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of the action and that would minimize the economic impact of the proposed rule on small entities.

In June 2006, the Council adopted a preferred alternative, Alternative 3, to (a) revoke all inactive halibut and sablefish QS, held by initial QS recipients, from the QS pools and (b) redistribute inactive halibut QS through a lottery if the final amount of revoked inactive QS exceeds the number of QS units equivalent to 50,000 pounds (22.7 mt) for all IPHC regulatory areas in the year of the lottery.

After the Council's 2006 action on the multi-part IFQ regulatory amendment package, NMFS separated the Council's multiple recommendations into different regulatory amendment packages, including this proposed action on inactive QS. In 2008, the amount of inactive QS was less than the threshold poundage prompting the Council, in February 2009, to reaffirm its previous recommendation for Alternative 3, minus the lottery. An updated RIR/IRFA for this proposed regulatory amendment to the halibut and sablefish IFQ program was finalized September 8, 2009.

In 1995, more than 500 persons were issued QS that they subsequently did not use and that would be considered inactive QS under this proposed action. By December 31, 2009, the number of IFQ permit holders with inactive QS declined to 242, with 240 holding inactive halibut QS, and three holding inactive sablefish QS (one person held inactive QS for both species). Using 2009 ratios, the amount of inactive QS held in December 2009 represent 24,299 pounds (1 mt) of halibut and 731 pounds (0.33 mt) of sablefish.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under Control No. 0648–0272. Public reporting burden for a letter requesting NMFS not revoke IFQ Program QS is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 17, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679–FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

2. In § 679.40, add paragraph (a)(10) to read as follows:

§ 679.40 Sablefish and halibut QS.

* * * * *

(a) * * *

(10) NMFS revokes inactive QS if the person holding inactive QS does not:

(i) Respond in writing to NMFS, within 60 days after NMFS issues a Notice of Determination of Quota Share Inactivity (Inactive QS Notice) sent to the address of record as defined at § 679.43(e) of this part, requesting that the inactive QS not be revoked.

(ii) For purposes of paragraph (a)(10) of this section, "respond in writing" means write a statement directing NMFS to change the status of QS to "active" and sign and date the statement or complete the form attached to the Inactive QS Notice and send through U.S Mail to the NMFS, Alaska Region address provided on the Inactive QS Notice and printed on the front side of the form.

(iii) For purposes of paragraph (a)(10) of this section, the term "inactive QS" means halibut QS or sablefish QS, held by a person who received an initial allocation of halibut QS or sablefish QS and has not taken any of the following actions:

(A) Transferred any halibut QS or sablefish QS pursuant to § 679.41;

(B) Transferred any halibut IFQ or sablefish IFQ pursuant to § 679.41;

(C) Landed any halibut authorized by IFQ halibut permit(s) issued to that person; or

(D) Landed any sablefish authorized by IFQ sablefish permit(s) issued to that person.

* * * * * *

[FR Doc. 2010–20873 Filed 8–20–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 162
Monday, August 23, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

GMUG Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The GMUG RAC will meet in Delta, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to 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 Tuesday, September 14, 2010, 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.

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.fs.fed.us/r2/gmug/* under "GMUG RAC Information." Visitors are encouraged to call ahead to Lee Ann Loupe, RAC Coordinator at 970.874.6717 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lee Ann Loupe, GMUG RAC Coordinator, 970.8874.6717 or e-mail: 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.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: The appointed Committee members will decide and approve the review process and evaluation criteria for Title II projects; review and discuss the projects that were submitted to the Committee by August 2; and make recommendations for funding/approval of those projects to utilize Title II funds within Garfield, Mesa, Delta, Gunnison and Montrose Counties, Colorado.

Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 8, 2010 will have the opportunity to address the Comittee at those sessions.

Dated: August 11, 2010.

Sherry Hazelhurst,

Deputy Forest Supervisor/GMUG RAC DFO.

[FR Doc. 2010–20576 Filed 8–20–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie (MBS) Resource Advisory Committee (RAC) will meet in Sedro Woolley, Washington on September 22, 2010. The committee is meeting to review and rank 2010 and 2011 Title II RAC proposals.

DATES: The meeting will be held on Wednesday, September 22, 2010, from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Mt. Baker Ranger District office located at 810 State Route 20, Sedro Woolley, Washington 98284.

FOR FURTHER INFORMATION CONTACT: Jon Vanderheyden, District Ranger, Mt. Baker Ranger District, phone (360) 854–2601, e-mail *jvanderheyden@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.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. More information will be posted on the Mt. Baker-Snoqualmie National Forest Web site at *http://www.fs.fed.us/r6/mbs/projects/rac.shtml.*

Comments may be sent via e-mail to *jvanderheyden@fs.fed.us* or via facsimile to (360) 856–1934. 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 Mt. Baker Ranger District office at 810 State Route 20, Sedro Woolley, Washington, during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

Dated: August 13, 2010.

Y. Robert Iwamoto,

Forest Supervisor.

[FR Doc. 2010–20683 Filed 8–20–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ashley Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ashley Resource Advisory Committee will meet in Vernal, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub.L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to conduct "welcomes" and introductions, review the Federal Advisory Committee Act requirements, brief participants on Payments to States legislative history, discuss the guidelines for Title II and Title III funding and proposals, capture and record preliminary project ideas and receive public comment on the meeting subjects and proceedings.

DATES: The meeting will be held August 19, 2010, from 6 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Ashley National Forest Supervisor's Office, 355 North Vernal Avenue, in Vernal, Utah. Written comments should be sent to Ashley National Forest, 355 North Vernal Avenue, Vernal, UT 84078. Comments may also be sent via e-mail to *ljhaynes@fs.fed.us,* or via facsimile to 435–781–5142.

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 Ashley National Forest, 355 North Vernal Avenue, Vernal, UT.

FOR FURTHER INFORMATION CONTACT: Louis Haynes, RAC Coordinator, Ashley National Forest, (435) 781–5105; e-mail: *ljhaynes@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.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome and Committee introductions; (2) Federal Advisory Committee Act overview; (3) review of Payments to States legislative history and discussion of requirements related to Title II and Title III funding; (4) discussion of Committee member roles and operational guidelines; (5) discussion of preliminary project ideas; (6) election of committee chairperson, (7) review of next meeting purpose, location, and date; (8) and receive public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 10, 2010 will have the opportunity to address the committee at those sessions.

Dated: July 29, 2010.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 2010–20686 Filed 8–20–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pike & San Isabel Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Pike & San Isabel Resource Advisory Committee will meet in Pueblo, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held on September 23, 2010, and will begin at 9 a.m.

ADDRESSES: The meeting will be held at the Supervisor's Office of the Pike & San Isabel National Forests, Cimarron and Comanche National Grasslands (PSICC) at 2840 Kachina Dr., Pueblo, Colorado. Written comments should be sent to Barbara Timock, PSICC, 2840 Kachina Dr., Pueblo, CO 81008. Comments may also be sent via e-mail to *btimock@fs.fed.us,* or via facsimile to 719–553–1416.

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 PSICC, 2840 Kachina Dr., Pueblo, CO 81008. Visitors are encouraged to call ahead to 719–553–1415 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Barbara Timock, RAC coordinator, USDA, Pike & San Isabel National Forests, 2840 Kachina Dr., Pueblo, CO 81008; (719) 553–1415; E-mail *btimock@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.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel. (2) Selection of a chairperson by the committee members. (3) Receive materials explaining the process for considering and recommending Title II projects; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 20, 2010 will have the opportunity to address the Committee at those sessions.

Dated: August 17, 2010.

John F. Peterson,

Acting Forest Supervisor.

[FR Doc. 2010–20802 Filed 8–20–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet at the USDA Service Center in Redding, California, on September 1, 2010 beginning at 8:30 a.m. The meeting will consist of an update on Shasta County projects, RAC recommended project progress, as well as changes made to projects to meet RAC funding 2010/2011 allocations.

DATES: Wednesday, September 1, 2010 at 8:30 a.m.

ADDRESSES: The meeting will be held at the USDA Service Center, 3644 Avtech Parkway, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Resource Advisory Committee Coordinator Rita Vollmer at (530) 226–2595 or *rvollmer@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Shasta County Resource Advisory Committee.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 2010–20685 Filed 8–20–10; 8:45 am]

BILLING CODE 3410–11–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance Office of Food for Peace Announcement of Draft Request for Applications for Title II Non-Emergency Food Aid Programs;

Notice

Pursuant to the Food for Peace Act of 2008, notice is hereby given that the Draft Request for Applications for Title II Non-Emergency Food Aid Programs will be available to interested parties for general viewing.

For individuals who wish to review, the Draft Request for Applications for Title II Non-Emergency Food Aid

Programs will be available for thirty days via the Food for Peace Web site: *http://www.usaid.gov/our_work/humanitarian_assistance/ffp/progpolicy.html* on or about August 23, 2010. Interested parties can also receive a copy of the Draft Request for Applications for Title II Non-Emergency Food Aid Programs by contacting the Office of Food for Peace, U.S. Agency for International Development, RRB 7.06–152, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600.

Juli Majernik,

Grants Manager, Policy and Technical Division, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 2010–20874 Filed 8–20–10; 8:45 am]

BILLING CODE P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Accessibility Guidelines for Shared Use Paths

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of public information meeting.

SUMMARY: The Access Board plans to develop new accessibility guidelines specific to shared use paihs (SUPs) designed for use by pedestrians, cyclists, roller skaters, skateboarders, and other non-motorized users. In addition to general recreational use, SUPs often serve a transportation purpose, providing a system of off-road transportation routes for users. The Access Board will hold a public information meeting in conjunction with the ProWalk/ProBike 2010 Conference to provide an opportunity for individuals with disabilities, designers of shared use paths, and those with expertise in this area to provide information to assist the Access Board in establishing accessibility guidelines for shared use paths.

DATES: The information meeting will be on Monday, September 13, 2010 from 1 p.m. until 5 p.m.

ADDRESSES: The public information meeting will be held in conjunction with the ProWalk/ProBike 2010 Conference at the Chattanooga Convention Center, Ballroom G, 1150 Carter Street, Chattanooga, Tennessee 37402.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0017 (voice); 202–272–0082 (TTY). Electronic mail address: *greenwell@access-board.gov*.

SUPPLEMENTARY INFORMATION: The Access Board plans to develop new accessibility guidelines specific to shared use paths (SUPs) designed for use by pedestrians, cyclists, roller skaters, skateboarders, and other non-motorized users. In addition to general recreational use, SUPs often serve a transportation purpose, providing a system of off-road transportation routes for users. Whether located within a highway right-of-way, provided along a river, or established over natural terrain within an independent right of way, SUPs are differentiated from sidewalks, trails, and accessible routes on sites by their multipurpose use.

The Access Board will hold a public information meeting on September 13, 2010 in conjunction with the ProWalk/ProBike 2010 Conference to provide an opportunity for individuals with disabilities, designers of shared use paths, and those with expertise in this area to provide information to assist the Access Board in establishing accessibility guidelines for shared use paths. The meeting will feature representatives from the State of Washington Department of Transportation, Florida Department of Transportation, and the American Association of State Highway and Transportation Officials (AASHTO) who will address upcoming guidance on shared use path design. Attendees are encouraged to discuss issues related to accessibility of shared use paths.

The information meeting is open to all members of the public, including those who are not registered to attend the ProWalk/ProBike Conference. The meeting location is accessible to individuals with disabilities. Sign language interpreters and real-time captioning will be provided. For the comfort of other participants, persons attending the hearing are requested to refrain from using perfume, cologne, and other fragrances.

David M. Capozzi,

Executive Director.

[FR Doc. 2010–20833 Filed 8–20–10; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Pennsylvania State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that a planning and briefing meeting of the Pennsylvania State Advisory Committee will convene on September 16, 2010 at 11:30 a.m. at the Stayer Building, MultiPurpose Room, 51 Lyte Road Millersville University, Millersville, PA 17551. The purpose of the briefing meeting is to consider issues surrounding the employment of persons with disabilities in the state of Pennsylvania. The purpose of the planning meeting is to discuss the Committee's next steps.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by October 16, 2010. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. They may be faxed to 202–376–7748, or e-mailed to *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 18, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–20830 Filed 8–20–10; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that a planning meeting of the New Jersey State Advisory Committee will convene at on September 21, 2010 at 11 a.m. at the Legislative Annex Building, 125 West State Street, Trenton, New Jersey 08625, Room 10. The purpose of the planning meeting is to discuss committee member suggestions for a briefing topic to be scheduled in FY 2011.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by October 21, 2010. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. They may be faxed to 202–376–7748, or e-mailed to *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, August 18, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–20831 Filed 8–20–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; User Engagement Survey for Water Resources Forecasts and Climate Information

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 22, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kevin Werner, (801) 524–5130 or *kevin.werner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a proposed new information collection.

As part of the NOAA mission: "To understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs", the proposed survey will be part of a stakeholder engagement effort to more clearly define what those needs are. The proposed survey will be used to engage with and assess the science and forecasting needs of stakeholders in the water resources sector. The water resources sector includes agencies and companies operating reservoirs, and private and public interests in regulating rivers. The survey is designed to (1) assess the accessibility and utility of water and climate information and data, (2) assess participants' perceptions and knowledge about water and climate, and (3) evaluate user needs and the gaps in existing water and climate information. Participation in the survey will be entirely voluntary and will usually be in conjunction with workshops related to water resources and/or climate. This information collection will be conducted by the National Weather Service.

II. Method of Collection

Respondents will have a choice of either electronic or paper forms. Methods of submittal include electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new collection).

Affected Public: Non-profit institutions; State, local, or tribal government; business or other for-profit organizations; Federal Government.

Estimated Number of Respondents: 90.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 45.

Estimated Total Annual Cost to Public: $100 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 18, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–20803 Filed 8–20–10; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; An Observer Program for Vessels in the Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 22, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Janell Majewski, 206–860–3293, or *Janell.Majewski@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a renewal of a currently approved information collection.

The National Marine Fisheries Service At-Sea Hake and West Coast Groundfish Observer Programs define observer duties, train and debrief observers, and manage observer data and its release. The observers, deployed aboard vessels participating in the US West Coast groundfish fishery, are hired by observer providers who contract with the vessels to provide the required observer coverage (50 CFR 660). This data collection relates to the response time for observer providers and observers to register for training, debriefing or responses to suspension or decertification.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include electronic (Web-based or e-mail) and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0500.

Form Number: None.

Type of Review: Regular submission (renewal of a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time Per Response: Training/briefing/debriefing registration, 7 minutes; contract submission, 5 minutes; change in ownership of observer provider company, 15 minutes; boarding refusals, 10 minutes; weekly status reports, 15 minutes; reports of observer illness, injury, harassment, intimidation, or violations of standards of conduct or conflict of interest, 15 minutes.

Estimated Total Annual Burden Hours: 111.

Estimated Total Annual Cost to Public: $2,856 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 17, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–20770 Filed 8–20–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 50–2010]

Foreign-Trade Zone 72—Indianapolis, IN; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Indianapolis Airport Authority, grantee of FTZ 72, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 17, 2010.

FTZ 72 was approved by the Board on September 28, 1981 (Board Order 179, 46 FR 50091, 10/9/1981) and expanded on September 2, 1992 (Board Order 598, 57 FR 41915, 9/14/1992) and on November 18, 2004 (Board Order 1359, 69 FR 70121, 12/2/2004).

The current zone project includes the following sites: *Site 1:* (4,832 acres) within the Indianapolis International Airport complex; *Site 2:* (318 acres) Flagship Industrial Park, West 73rd Street, Anderson, Madison County; *Site 3:* (674 acres) within the Park 100 Business Park, located at 71st Street and Interstate 465, Indianapolis, Marion County (includes 3 acres located at 4950 W. 79th Street); *Site 4:* (154 acres) within the Park Fletcher Business Park, located at Interstate 465 and Airport Expressway, Indianapolis, Marion County; *Site 5:* (182 acres) within the Plainfield Business Park, Plainfield, Hendricks County; *Site 9:* (27 acres) located at 2300 Southeastern Avenue, Indianapolis, Marion County; *Site 10:* (52 acres) located at 3003 Reeves Road, Plainfield, Hendricks County; *Site 11:* (5 acres) located at 4605 Decatur Boulevard, Indianapolis; *Site 12:* (258 acres) Scatterfield Business Park, Scatterfield Road, Anderson, Marion County; and, *Site 13:* (44 acres)—Eagle Park, located south of Interstate 69, west of State Road 109 and north of 67th Street, Anderson, Marion County.

The grantee's proposed service area under the ASF would be Bartholomew, Benton, Boone, Carroll, Cass, Clay, Clinton, Decatur, Delaware, Fayette, Fountain, Franklin, Grant, Greene, Hamilton, Hancock, Hendricks, Henry, Howard, Jennings, Johnson, Lawrence, Madison, Marion, Miami, Monroe, Montgomery, Morgan, Owen, Parke, Putnam, Rush, Shelby, Tippecanoe, Tipton, Vigo, Warren, Wayne and White Counties, Indiana, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Indianapolis Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize and expand its existing zone project to include existing Sites 1–3 and 12–13 as "magnet" sites and Sites 9–11 as "usage-driven" sites, as well as to remove Sites 4 and 5. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting approval of the following new "magnet" sites: *Proposed Site 6:* (123 acres) EaglePoint Business Park, adjacent to the I–74/I–65 interchange, Brownsburg, Hendricks County; *Proposed Site 7:* (933 acres) AllPoints Business Park, west of Ronald Reagan Parkway and north of State Highway 40, Plainfield, Hendricks County; and, *Proposed Site 8:* (503 acres) Lebanon Business Park, southwest corner of the intersection of I–655 and State Route 32, Lebanon, Boone County. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 72's authorized subzones.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 22, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 8, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*. For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: August 17, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–20901 Filed 8–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 49–2010]

Foreign-Trade Zone 181—Akron/Canton, OH; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Northeast Ohio Trade & Economic Consortium, grantee of FTZ 181, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 17, 2010.

FTZ 181 was approved by the Board on December 23, 1991 (Board Order 546, 57 FR 41, 1/2/1992) and expanded on: June 20, 1997 (Board Order 902, 62 FR 36044, 7/3/1997); March 30, 1998 (Board Order 968, 63 FR 16962, 4/7/1998); September 13, 1999 (Board Order 1053, 64 FR 51291, 9/22/1999); November 21, 2002 (Board Order 1260, 67 FR 71933, 12/3/2002); May 19, 2004 (Board Order 1334, 69 FR 30281–30282, 5/27/2004); September 28, 2006 (Board Order 1479, 71 FR 59072, 10/6/2006); December 11, 2006 (Board Order 1493, 71 FR 71507–71508, 12/11/2006); and, August 23, 2007 (Board Order 1522, 72 FR 8/31/2007).

The current zone project includes the following sites: *Site 1:* (158 acres) Within the Akron-Canton Regional Airport, CAK International Business Park, Green (Summit County); *Site 2:* (3 acres) located at 8400 Port Jackson Avenue, Jackson Township (Summit County); *Site 3:*

(21 acres) located at 3175, 3325 & 3375 Gilchrist Road, Mogadore (Summit County); *Site 4:* (30 acres) Terminal Warehouse facility, 1779 Marvo Drive, Akron (Summit County); *Site 5:* (191 acres) Prosper Industrial Park, Stow (Summit County); *Site 6:* (444 acres) within the Youngstown-Warren Regional Airport (Trumbull County); *Site 7:* (258 acres) River Road Industrial Park (Trumbull County); *Site 8:* (50 acres) within the Warren Commerce Park (Trumbull County); *Site 9:* (200 acres) within the Allied Industrial Park (Mahoning County); *Site 10:* (19 acres) Port Terminal Facility, 1250 St. George Street, East Liverpool (Columbiana County); *Site 11:* (60 acres) Leetonia Industrial Park, State Route 344, Leetonia (Columbiana County); *Site 12:* (66 acres) Intermodal Industrial Park Port Facility, Wellsville (Columbiana County); *Site 13:* (806 acres) Neocom Industrial Park (Stark County Intermodal Facility), 5000 Maryland Avenue, SW., Navarre, Stark County; *Site 14:* (60 acres) within the MDF Industrial Park located on the southeast side of the city of Massillon (Stark County); *Site 15:* (12 acres) located at 8045 Navarre Road, SW., Massillon, operated by Peoples Cartage (Stark County); *Site 16:* (4 acres) within the 18-acre warehouse facility of Peoples Cartage, Inc., located at 2207 Kimball Road, SE., Canton (Stark County); *Site 17:* (158 acres) Sawburg Commerce Industrial Park on the west side of Alliance (Stark County); *Site 18:* (38 acres) Detroit Diesel warehouse located at 515 11th Street, SE., Canton (Stark County); *Site 19:* (5 acres) I–77 / US 30 Center, located at 1141 Navarre Road, SW. (Stark County); *Site 20:* (142 acres) Canton Commerce Dev. LLC, I–77 & Faircrest Road (Stark County); *Site 21:* (3 acres) Dillard Property/RRR Development located at 8817 Pleasantwood Avenue, NW., Lake Township (Stark County); *Site 22:* (2,068 acres) Mansfield Lahm Airport complex, State Route 13 at South Airport Road, Mansfield; *Site 23:* (309 acres) Pinney Dock and Transport Company, Inc. facility located at 1149 East 5th Street, Ashtabula (Ashtabula County); *Site 24:* (111 acres) Beacon Transportation Park between I–71 and I–76, Seville (Medina County); *Site 25:*

(38 acres) Brunswick Commerce Center at the intersection of Route 303 and I–71, Brunswick (Medina County); *Site 26:* (51 acres) Portside Corporate Park, located at 2200 Akron-Medina Road, Sharon Township (Medina County); *Site 27:* (47 acres) Wadsworth Corporate Park, Wadsworth (Medina County); and, *Site 28:* (141 acres) Route 30 Industrial Park, State Route 30, Wooster (Wayne County).

The grantee's proposed service area under the ASF would be Ashtabula, Trumbull, Mahoning, Columbiana, Portage, Summit, Stark, Medina, Wayne and Richland Counties, Ohio, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Cleveland Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize and expand its existing zone project to include existing Sites 1, 3–6, and 8–27 as "magnet" sites, as well as to remove Sites 2, 7 and 28. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant has also requested that Site 1 be expanded to include an additional 193 acres. In addition, the applicant is requesting approval of the following new "magnet" site: *Proposed Site 29:* (71 acres) Albrecht Inc., 2700 and 2850 Gilchrist Road, Akron (Summit County). Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 181's authorized subzone.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 22, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 8, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: August 17 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–20902 Filed 8–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 23, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3207.

Background

On May 28, 2010, the Department of Commerce ("Department") published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC") covering the period April 1, 2009—March 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 29976–29980 (May 28, 2010) ("*Initiation*").

On July 8, 2010, Calgon Carbon Corporation and Norit Americas Inc. ("Petitioners") withdrew their request for an administrative review for the following companies: Anhui Handfull International Trading (Group) Co., Ltd.; Anyang Sino-Shon International Trading Co., Ltd.; China Nuclear Ningxia Activated Carbon Plant; Datong Forward Activated Carbon Co., Ltd.; Datong Guanghua Activated Carbon Co., Ltd.; Datong Hongtai Activated Carbon Co., Ltd.; Datong Huibao Active Carbon Co., Ltd.; Datong Huibao Activated Carbon Co., Ltd.; Datong Juqiang Activated Carbon Co., Ltd.; Datong Locomotive Coal & Chemicals Co., Ltd.; Datong Yunguang Chemicals Plant; Dongguan SYS Hitek Co., Ltd.; Fujian Yuanli Active Carbon Co., Ltd.; Hangzhou Nature Technology; Hebei Foreign Trade and Advertising Corporation; Huairen Jinbei Chemical Co., Ltd.; Jiangsu Taixing Yixin Activated Carbon Technology Co., Ltd.; Jilin Bright Future Chemicals Co., Ltd.; Jilin Province Bright Future Industry and Commerce Co., Ltd.; Keyun Shipping (Tianjin) Agency Co., Ltd.; Ningxia Guanghua Activated Carbon Co., Ltd.;[1] Ningxia Guanghua Chemical Activated Carbon Co., Ltd.; Ningxia Mineral & Chemical Ltd.; Ningxia Pingluo County Yaofu Activated Carbon Plant; Ningxia Pingluo County Yaofu Activated Carbon Factory; Ningxia Pingluo Xuanzhong Activated Carbon Co., Ltd.; Ningxia Pingluo Yaofu Activated Carbon Factory; Nuclear Ningxia Activated Carbon Co., Ltd.; Pingluo Yu Yang Activated Carbon Co., Ltd.; Shanghai Light Industry and Textile Import & Export Co., Ltd.; Shanxi Carbon Industry Co., Ltd.; Shanxi Dapu International Trade Co., Ltd.; Shanxi Newtime Co., Ltd.; Shanxi Qixian Foreign Trade Corporation; Shanxi Xuanzhong Chemical Industry Co., Ltd.; Sinoacarbon International Trading Co., Ltd.; Tianjin Century Promote International Trade Co., Ltd.; Taiyuan Hengxinda Trade Co., Ltd.; Triple Eagle Container Line; Uniclear New-Material Co., Ltd; United Manufacturing International (Beijing) Ltd.; VitaPak (HK) Industrial Ltd.; Xi'an Shuntong International Trade & Industrials Co., Ltd.; Xingtai Coal Chemical Co., Ltd; Zhejiang Xingda Activated Carbon Co., Ltd.

Also on July 8, 2010, Petitioners withdrew their request for review of Jiangxi Huaiyushan Suntar Active Carbon Co., Ltd. However, the review for this company was rescinded previously in the *Certain Activated Carbon from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review* published on August 11, 2010, in 75 FR 48644.[2] The Petitioners were the only party to request a review of these companies.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws

[1] *See* Memo to the File from Catherine Bertrand regarding Telephone Call to Counsel for Petitioners (August 12, 2010).

[2] *See Certain Activated Carbon from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 48644 (August 11, 2010).

the request within 90 days of the date of publication of notice of initiation of the requested review. Petitioners' request was submitted within the 90-day period, and thus, is timely. Because Petitioners' withdrawal of requests for review is timely and because no other party requested a review of the aforementioned companies, in accordance with 19 CFR 351.213(d)(1), we are partially rescinding this review with respect to the above listed companies.

Assessment Rates

At this time, the Department cannot order liquidation for the above companies because they remain part of the PRC-wide entity and their respective entries may be under review in the ongoing administrative review. The Department intends to issue assessment instructions for the PRC-wide entity, which will cover any entries by the above companies, 15 days after publication of the final results of the ongoing administrative review.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 17, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–20903 Filed 8–20–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY33

New England Fishery Management Council; Public Hearing

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

ACTION: Public hearing; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a public hearing to solicit comments on proposals to be included in the Draft Amendment 3 to the Deep Sea Red Crab Fishery Management Plan (FMP).

DATES: The public hearing will be held on Thursday, September 9, 2010, at 5 p.m. Written comments should be sent on or before September 23, 2010, by 5 p.m. EDT to Patricia Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; Telephone: (508) 339–2200; Fax: (508) 339–1040.

Comments may also be sent via fax to (978) 281–9135 or submitted via e-mail to *rc_amendment3@noaa.gov* with "Comments on Red Crab Draft Amendment 3" in the subject line. Requests for copies of the public hearing document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492. The public hearing document is also accessible electronically via the Internet at *http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Council proposes to take action to amend the Deep Sea Red Crab Fishery Management Plan (FMP) and to address the new and revised requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The Council will consider comments from fishermen, interested parties and the general public on the proposals and alternatives described in the public hearing document for Draft Amendment 3 to the Red Crab FMP. Once it has considered public comments, the Council will approve final management measures and prepare a submission package for NMFS. There will be an additional opportunity for written public comments on the Proposed Rule when it is published in the **Federal Register**.

Major elements of the alternatives in the Draft Amendment 3, including a Draft Supplemental Environmental Impact Statement, include: (1) implementation and specification of annual catch limits (ACLs) and accountability measures (AMs) to comply with a new mandate of the reauthorized MSA; (2) establish specifications for fishing years 2011–13; (3) consider changes to the management system that respond to industry suggestions for increasing efficiency in the fishery; (4) replace the Target Total Allowable Catch (TAC) and days-at-sea management system with a hard TAC; (5) eliminate trip limits; and (6) replace the blanket prohibition on landing more than one tote of females per trip with a procedure that would allow the harvest of female crab contingent upon Scientific and Statistical Committee (SSC) and Council approval of specifications that include female allowable biological catch (ABC) and ACL.

Special Accommodations

This hearing is physically accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least five days prior to the meeting date.

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

Dated: August 18, 2010.

William D. Chappell,

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

[FR Doc. 2010–20804 Filed 8–20–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Notice of Rescission of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 23, 2010.

SUMMARY: On March 22, 2010, the Department of Commerce (the Department) initiated a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp from India to determine whether R.D.R. Exports (RDR) is the successor-in-interest company to Jaya Satya Marine Exports Pvt. Ltd. (Jaya Satya). *See Certain Frozen Warmwater Shrimp From India: Initiation of Antidumping Duty Changed-Circumstances Review,* 75 FR 13492 (Mar. 22, 2010) (*Initiation*). On July 30, 2010, RDR withdrew its request for a changed circumstances review. The Department is now rescinding this changed circumstances antidumping duty administrative review.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse; AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6345.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from India. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (Feb. 1, 2005).

On January 25, 2010, RDR requested that the Department conduct an expedited changed circumstances review under 19 CFR 351.221(c)(3)(iii) to determine whether it is the successor-in-interest to Jaya Satya for purposes of determining antidumping liability. On March 22, 2010, the Department initiated a changed circumstances review but did not expedite the review, as requested by RDR, because we required additional information regarding the factual statements forming the basis of RDR's changed circumstances review request. *See Initiation,* 75 FR at 13493.

In April, June, and July 2010, we requested further information and documentation from RDR to substantiate its claim to be the successor-in-interest to Jaya Satya. RDR submitted additional information in response to the first two of these requests in May and June 2010. On July 30, 2010, before the deadline for submitting its response to the third additional information request, RDR withdrew its request for a changed circumstances review.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Rescission of Changed Circumstances Review

Although it does not specifically reference changed circumstances reviews, section 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review if the party requesting the review withdraws its request within ninety days of the date of publication of the notice of initiation of the requested review. The Department's practice has been to apply this ninety-day deadline to changed circumstances review rescission requests. *See, e.g., Certain Softwood Lumber Products from Canada: Notice*

[1] "Tails" in this context means the tail fan, which includes the telson and the uropods.

of Rescission of Antidumping Duty Changed Circumstances Review, 71 FR 16120 (Mar. 30, 2006). However, 19 CFR 351.213(d)(1) also provides that the Department may extend the ninety day time limit for withdrawing the request for an administrative review if we determine that it is reasonable to do so. In this case, RDR withdrew its request for a changed circumstances review on July 30, 2010, which is beyond ninety days of the date of initiation. However, we note that no interested party, including the petitioner, has objected to RDR's withdrawal request. Additionally, the Department has not expended significant resources conducting this review. Therefore, we determine that it is reasonable to extend the ninety day time limit in this instance. Consequently, the Department has accepted RDR's withdrawal request in this case as timely and is now rescinding this antidumping duty changed circumstances review. U.S. Customs and Border Protection will continue to suspend entries of subject merchandise at the appropriate cash deposit rate for all entries of certain frozen warmwater shrimp from India.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4) and sections 751(b) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: August 17, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–20897 Filed 8–20–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 167—Green Bay, WI; Site Renumbering Notice

Foreign-Trade Zone 167 was approved by the FTZ Board on August 23, 1990 (Board Order 483, 55 FR 35916, 9/4/1990), and expanded on August 4, 2005 (Board Order 1407, 70 FR 48537–48538, 8/18/2005).

FTZ 167 currently consists of two "sites" totaling 4,601 acres in the Green Bay area. The current update does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering that separates certain non-contiguous sites for record-keeping purposes.

Under this revision, the site list for FTZ 167 will be as follows: *Site 1* (60 acres)—located at South Point Road and Airport Road adjacent to Austin Straubel Airport in Ashwaubenon, Brown County; *Site 2* (289 acres)—Oshkosh Southwest Development Park located west of Oakwood Road, north of State Highway 91, east of Clairville Road and south of 20th Avenue in the City of Oshkosh and Town of Algoma, Winnebago County; *Site 3* (1,654 acres)—Austin Straubel Airport located in Ashwaubenon and Hobart, Brown County; *Site 4* (650 acres)—Ashwaubenon Industrial Park located at Adam Drive and Ridge Road in Ashwaubenon and Hobart, Brown County; *Site 5* (20 acres)—Seven Generations Corporation (Oneida Tribe Economic Development) facility located west of Packerland Drive, north of Partnership Drive, east of Commodity Lane and south of Glory Road in Ashwaubenon, Brown County; *Site 6* (162 acres)—Oneida Industrial Park located at the intersection of East Adam Drive and Short Road in Ashwaubenon, Brown County; *Site 7* (10 acres)—the SJ Spanbaurer (Fox Valley Technical College) facility bounded by West 20th Avenue to the north, Oregon Street to the east, West 23rd Avenue to the south and Minnesota Street to the west, in the City of Oshkosh, Winnebago County; and, *Site 8* (1,318 acres)—Wittman Regional Airport located in the City of Oshkosh and the Townships of Algoma and Nekimi, Winnebago County.

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: August 17, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–20899 Filed 8–20–10; 8:45 am]

BILLING CODE P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* September 23, 2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Addition

On 7/9/2010 (75 FR 39497–39499), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide a service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Operations and Maintenance Service, Federal Aviation Administration, William J. Hughes Technical Center (Center-wide), Atlantic

City International Airport, NJ .
NPA: Fedcap Rehabilitation Services, Inc., New York, NY.
Contracting Activity: Dept of Transportation, Federal Aviation Administration, Atlantic City Airport, NJ.

Barry S. Lineback,
Director, Business Operations.
[FR Doc. 2010–20810 Filed 8–20–10; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI) Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, Department of Education.

PURPOSE: Revised meeting notice and solicitation of third-party written comments.

SUMMARY: This notice advises interested parties of changes concerning the scheduling of the first meeting of the reconstituted National Advisory Committee on Institutional Quality and Integrity (NACIQI) and amends information provided in the original meeting notice published in the April 23, 2010 **Federal Register** (75 FR 21280).

FOR FURTHER INFORMATION CONTACT: Melissa Lewis, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, Room 8060, 1990 K Street, NW., Washington, DC 20006, telephone: (202) 219–7009; fax: (202) 219–7005, e-mail: *Melissa.Lewis@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday. For individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreter services, assistive listening devices, and/or materials in alternative format), they should contact Melissa Lewis, telephone: (202 219–7009); e-mail: *Melissa.Lewis@ed.gov* no later than November 1, 2010. We will attempt to meet requests after this date, but cannot guarantee the availability of the requested accommodation. The meeting site is accessible.

Revised Information: (1) The NACIQI is now scheduled to meet on Wednesday-Friday, December 1–3, 2010, from 8:30 a.m. to approximately 5 p.m. The NACIQI will not meet on Tuesday-Thursday, September 14–16, 2010. Printed meeting materials, including but not limited to the Department's staff analyses, will not be available at the meeting. Instead, the Department will offer electronic copies of meeting materials by making them available on the NACIQI Web site, *http://www2.ed.gov/about/bdscomm/list/naciqi.html*, approximately two weeks in advance of the meeting and will provide them on CDs at the meeting. (2) Changes in the list of agencies originally proposed for review at the meeting include:

- The North Central Association Commission on Accreditation and School Improvement, which was originally proposed for review during the NACIQI's September 2010 meeting, is no longer proposed for review because it is now considered a new agency known as AdvancED.
- The New England Association of Schools and Colleges, Commission on Technical and Career Institutions, which was originally proposed for review during the NACIQI's September 2010 meeting, is no longer proposed for review because they no longer wish to seek continued recognition from the Department of Education.

(3) Because of the new meeting date and the revised list of agencies, written third-party comments may be submitted up to September 22, 2010 for consideration.

In all instances, written comments about agencies seeking initial recognition, continued recognition, and/or an expansion of an agency's scope of recognition must relate to the Criteria for Recognition found at section 496 of the Higher Education Act of 1965, as amended, and 34 CFR parts 602 and 603. In addition, comments for any agency whose interim report/compliance report is proposed for review must relate to the issues raised within the letter that requested the report.

The agencies proposed for review now comprise:

Nationally Recognized Accrediting Agencies.

Compliance Reports.

1. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission.
2. Commission on Accreditation of Healthcare Management Education.
3. Council on Accreditation of Nurse Anesthesia Educational Program.
4. Council on Education for Public Health.
5. Northwest Commission on Colleges and Universities (progress report).
6. The Higher Learning Commission of the North Central Association of Colleges and Schools.

Petition for Initial Recognition.

1. AdvancED.

Petitions for Renewal of Recognition.

1. American Academy for Liberal Education.
2. American Board of Funeral Service Education.
3. American Speech Language Hearing Association, Council on Academic Accreditation in Audiology and Speech-Language Pathology.
4. Commission on Massage Therapy Accreditation.
5. Council on Naturopathic Medical Education.
6. Midwifery Education Accreditation Council.
7. Montessori Accreditation Council for Teacher Education, Commission on Accreditation.
8. National Accrediting Commission of Cosmetology Arts and Sciences.
9. Western Association of Schools and Colleges Accrediting Commission for Schools.

State Agencies Recognized for the Approval of Nurse Education.

1. Missouri State Board of Nursing

When, where, and how should I submit my written comments?

Submit your written comments by e-mail no later than September 22, 2010 to the Accreditation and State Liaison (ASL) Records Manager at *aslrecordsmanager@ed.gov* with the subject line listed "Written Comments re: (agency name)." In all instances, your comments about agencies seeking continued recognition and/or an expansion of an agency's scope of recognition must relate to the Criteria for Recognition.

Do not send material directly to NACIQI members.

Only materials submitted by the deadline to the e-mail address listed in this notice, and in accordance with these instructions, become part of the official record and are considered by the Department and the NACIQI in their deliberations.

Will this be my only opportunity to submit written comments regarding agencies listed in this notice that are proposed to be reviewed by NACIQI at the meeting?

Yes. This notice announces the only opportunity you will have to submit written comments on those agencies for this meeting. However, a subsequent **Federal Register** notice will publish another meeting notice and invite individuals and groups to submit requests to make oral presentations before the NACIQI on the agencies proposed for review. That notice, however, does not offer a second opportunity to submit written

comments. If other agencies are added to the agenda when it is finalized, an additional notice will be published soliciting written comment on those agencies.

What happens to the written comments that I submit or submitted in response to the April 23, 2010 **Federal Register** *notice?*

Any third-party written comments regarding an agency received by September 22, 2010, in accordance with either this **Federal Register** notice, or with the April 23, 2010 **Federal Register** notice cited above, will become part of the official record. Those comments will be considered by the Department in its review of the agency's submission and by the NACIQI at the December 2010 meeting.

What happens to comments received after the deadline?

Department staff will review any comments received after the deadline. If such comments, upon investigation, reveal that the agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate. Documents responsive to this notice but received after September 22, 2010 will not be distributed to the NACIQI for its consideration. Individuals making oral presentations may not distribute written materials at the meeting.

How may I obtain electronic access to this document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www2.ed.gov/news/fedregister/index.html.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 5 U.S.C. Appendix 2.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2010–20908 Filed 8–20–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to Sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Pub. L. 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA state plan previously submitted by California.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual state at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA state plans filed by the fifty states, the District of Columbia and the territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that states, territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA Section 254(a)(11) through (13). HAVA Sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the second revision to the state plan for California.

The amendments to California's state plan provide for compliance with the Military and Overseas Voter Empowerment Act (MOVE Act) and account for changes in the methods of implementing HAVA. In accordance with HAVA Section 254(a)(12), all the state plans submitted for publication provide information on how the respective state succeeded in carrying out its previous state plan. California confirms that its amendments to the state plan were developed and submitted to public comment in accordance with HAVA Sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from August 23, 2010, the state is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA Section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising this state plan and encourages further public comment, in writing, to the state election official listed below.

The appendices referred to in California's state plan can be found at *http://www.eac.gov/payments_and_grants/state_plans.aspx.* An accessible version of this state plan can also be found at the same address.

Chief State Election Official

The Honorable Debra Bowen, Secretary of State, 1500 11th Street, 6th Floor, Sacramento, California 95814–2974, Phone: (916) 653–7244, Fax: (916) 653–4795.

Thank you for your interest in improving the voting process in America.

Dated: August 10, 2010.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

Overview

The Help America Vote Act of 2002 (HAVA) is now more than seven years old. The decision by Congress to provide new HAVA money to states gives California the opportunity to take stock of the efforts to make it easier for people to participate in democracy here and throughout the nation.

The events that took place in Florida during the 2000 Presidential election brought a number of concerns about the electoral process to the forefront, including:

- The difficulty in determining a voter's intent on punch-card voting systems because ballot cards contained hanging, dimpled or pregnant chads
- Lack of uniform standards in some states for determining voter intent when ballot cards contained hanging, dimpled or pregnant chads
- Voter registration list maintenance practices that affected voter eligibility
- Long lines at polling places
- Inconsistent pollworker training

HAVA attempted to address these concerns and focus attention on reducing ballot errors and improving access for voters with disabilities and those with alternative language needs by promoting the use of a new generation of voting systems.

The effort to create HAVA may have been driven by events in the 2000 Presidential election, but California took action before Congress adopted HAVA. Then-Secretary of State Bill Jones banned the use of pre-scored punch card voting systems, used then by more than half of the state's voters in September, 2001, and the State Legislature placed the Voting Modernization Bond Act, Proposition 41, on the March 5, 2002, ballot. This $200 million bond act was supported by voters and provided California counties with money to upgrade their voting systems. By June of 2002, the Voting Modernization Board, created by Proposition 41 to oversee administration of the bond act, began meeting. On October 29, 2002, HAVA was signed into law.

The 161 pages that make up HAVA represent what is arguably the most extensive federal election law rewrite ever enacted. Whereas previous efforts appropriately extended the vote to more people and removed barriers to participation, HAVA was directed at the very mechanics and technology being used to conduct elections. It accelerated the movement toward a new era of voting technology, including the use of direct-recording electronic (DRE) voting equipment. It required states to establish new, statewide voter registration databases to serve as the official list for elections, and fundamentally altered the voter registration process with new voter identification and verification requirements. Finally, it reinforced or expanded practices regarding provisional voting, voter education and poll worker training, reforms that California had led the nation in implementing prior to HAVA's enactment.

Following the adoption of HAVA, states that moved quickly, in some cases even before HAVA's enactment, to implement many of its provisions soon found themselves effectively "beta testing" voting systems that presented new, and unknown challenges. Questions about the security of voting systems, particularly DRE voting equipment, came to the fore. Decades-old testing and approval processes were challenged by the need to examine new, fundamentally different equipment that presented new questions that few had previously entertained or had experience answering. The deployment of new equipment raised practical, logistical and procedural difficulties. At the heart of the issue was the question of transparency. The reliance on proprietary source code for computerized, DRE voting units, precluded open, public examination of the entirety of voting systems and many questioned the ability of these voting systems to protect the security of the vote. To strengthen the electoral process, critics of DRE voting systems called for a transparent, auditable mechanism to add greater accountability to the process – the voter-verified paper audit trail (VVPAT).

Following a 2004 incident in California in which source code changes made by a voting system vendor were implemented without going through the required state testing and approval process, state law was amended to strengthen the Secretary of State's approval authority. The Legislature also adopted a requirement that, beginning in 2005, all DRE voting systems be equipped with an "accessible voter-verified paper audit trail" (AVVPAT) before they could be approved for use in California. Additionally, no DRE voting system could be approved for use that had not first received federal qualification, a process during which voting system source code would be examined. DRE voting systems already in use were required to be retrofitted with an AVVPAT by January 1, 2006. Soon thereafter, more than half of the states in the nation enacted VVPAT requirements of their own for DRE voting systems, but it is not yet a requirement of federal law or HAVA.

As California addressed these issues, it exercised the option to extend the HAVA implementation deadline from January 1, 2004 to January 1, 2006.

During this time, the Election Assistance Commission (EAC), created by HAVA to oversee and guide the implementation of the Act, was established and belatedly began to assume its duties. So-called "early" HAVA funding that was to be distributed even before the EAC was established was not made available to states until April 29, 2003 – more than four months after HAVA required the money to be made available and just eight months prior to HAVA's January 1, 2004, compliance deadline.

The EAC itself was established more than 10 months after HAVA required it to be established, and at the time of its inception, it had no funding for its operations. Consequently, a domino effect occurred that affected the ability of California and other states to implement HAVA's requirements. States had difficulty requesting and securing the federal funding intended to help them meet HAVA's requirements to deploy new voting systems, statewide voter registration databases and improve voter education programs. According to the EAC, in April 2004, four months after HAVA's initial January 1, 2004, deadline, less than 20 percent of this money had been disbursed to states. Furthermore, the EAC failed to provide states with guidance on how to implement HAVA. EAC guidance on how to establish a voter registration database was issued two

years later than HAVA required. The EAC's voluntary voting system guidelines (VVSG), the most definitive explanation of HAVA's voting system standards, were issued nearly two years later than the time provided for in HAVA, and just weeks before the ultimate January 1, 2006, deadline for states to comply with all of HAVA's requirements. On September 21, 2005, just three months before the EAC issued the VVSG, the United States Government Accountability Office (GAO) – the investigative arm of Congress – issued a report on the security and reliability of electronic voting systems being deployed to meet HAVA requirements. In that report, the GAO raised numerous concerns, stating:

> "In light of the recently demonstrated voting system problems; the differing views on how widespread these problems are; and the complexity of assuring the accuracy, integrity, confidentiality and availability of voting systems throughout their life cycles, the security and reliability concerns raised in recent reports merit the focused attention of federal, state, and local authorities responsible for election administration." (Page 23, GAO report issued September 21, 2005: "Federal Efforts to Improve Security and Reliability of Electronic Voting Systems are Under Way, but Key Activities need to be Completed")

Controversy over the deployment of new voting systems was not the only challenge faced by states. HAVA's requirement to establish a statewide voter registration database resulted in enforcement action, or the threat of enforcement action, by the U.S. Department of Justice (US DOJ) in more than a handful of states – including California. California had already engaged the US DOJ in discussions in early 2005 that culminated in the adoption of a November 2, 2005, Memorandum of Agreement (MOA) jointly executed between the Secretary of State and US DOJ. Pursuant to the MOA, California upgraded its CalVoter system – used previously for list maintenance purposes – to achieve "interim compliance" with HAVA's requirements. Under the MOA, the Secretary of State further committed to pursuing "full compliance" by deploying the new "VoteCal" system. That project was under way until April 19, 2010, when the Secretary of State's office discovered the vendor hired to develop and deploy the VoteCal project had not obtained a performance bond, which is a requirement of the contract the state executed with the vendor. On May 4, 2010, the Secretary of State sent the vendor a letter documenting, among other things, the vendor's lack of a performance bond, and required the vendor resolve the issue within 30 days. The letter offered the vendor an opportunity to meet with Secretary of State personnel to discuss the issues. During subsequent discussions with the vendor, the Secretary of State's office and the vendor mutually agreed to terminate the contract. A settlement to terminate the contract was executed on May 21, 2010.

The Secretary of State is committed to completing the VoteCal project. The state is also bound to complete the project pursuant to the terms of the MOA executed with the US DOJ on November 2, 2005. The work done to date on the project will facilitate those efforts. That work includes:

- Development of an RFP that documents in great detail the business requirements of the VoteCal project – all of the necessary functions the system must be capable of performing.
- Extensive, documented communication with stakeholders, including county elections officials, voting rights advocates, representatives of voters with disabilities and others who provide valuable input on the VoteCal business requirements.
- Experience gained with state oversight agencies, including procurement experts at the Department of General Services and technology experts at the Office of the Chief Information Officer.
- Input and advice from independent oversight contractors required by state law for technology projects, including an Independent Project Oversight Consultant and an Independent Verification and Validation consultant.
- Insight from county elections officials and vendors on the functions and operation of county election management systems, which must be integrated into the functions of VoteCal.

The Secretary of State will be moving quickly to assess lessons learned on the VoteCal project so far and determine the appropriate next steps, including renewing efforts to contract with a private vendor to build and deploy the VoteCal system. On July 19, 2010, a Special Project Report (SPR) was submitted to state agencies that must approve the project before it can move forward to be advertised for bid in a Request for Proposal (RFP). The project will also be submitted to the Legislature for final approval following the procurement process and award of the bid to a system integrator vendor. The SPR contains a preliminary estimated deployment of the VoteCal voter registration system statewide by June 2014. However, that preliminary timeline is subject to change, and a final timeline for development, testing and statewide deployment will be determined after a vendor is selected for the project. The estimated timeline for completion of the bidding process and award of the contract to the system integrator vendor under the state's solution-based procurement process is September 2011. Additional historical information about the VoteCal project, which includes a description of the business requirements for the project, is available on-line at www.sos.ca.gov/elections/votecal/.

The Secretary of State and county elections officials did not have the flexibility to wait until the controversy surrounding voting systems and database requirements abated before beginning to implement HAVA. HAVA implementation was pursued by the Secretary of State and county elections officials based on the requirement to meet the January 1, 2006, deadline.

Through the 2008 election cycle, California's elections officials implemented HAVA to the fullest extent possible, including:

- Creating the complaint procedures required as a prerequisite to receiving HAVA funding
- Expanding the capacity and languages available on the Secretary of State's toll-free voter information hotline

- Establishing the Secretary of State as the single statewide office to serve as a resource for military and overseas voters and for the counties that serve those voters
- Ensuring that provisional voters can, at no cost, check the status of their provisional ballot to determine if their ballot was counted, and if not, why not
- Creating a uniform definition of a vote cast on voting systems in use in California
- Establishing an "interim solution" statewide voter registration database that integrated and synchronized the 58 county election management systems containing California's voter rolls into a single, statewide system, pursuant to the MOA negotiated with the US DOJ
- Testing and approving voting systems intended to be HAVA-compliant, so California counties could acquire and deploy those voting systems
- Allocating HAVA funds to counties to defray the costs of Title III requirements and to improve polling place accessibility
- Working with counties to ensure that voting systems with the functionality required by HAVA voting system standards, including accessibility for voters with disabilities, were deployed at every polling place
- Making voter materials more accessible at the state and local level by providing them in alternative formats and improving the accessibility of websites
- Executing contracts with counties for federal grant funds to improve polling place accessibility and conducting outreach to voters with disabilities
- Providing statewide training in conjunction with the Department of Rehabilitation to elections officials on surveying polling places for accessibility during 2005 and 2006
- Establishing a Voting Accessibility Advisory Committee to recommend to the Secretary of State ways to improve accessibility to the electoral process
- Developing, pursuant to state law, poll worker training guidelines, which included training on HAVA requirements
- Providing guidance to counties on all aspects of HAVA, including developing and publishing a HAVA compliance manual

Following the 2006 election cycle, HAVA implementation has continued to evolve. In 2007, California undertook the most comprehensive review of voting systems ever conducted. Consistent with state legislative direction, the review included a top-to-bottom examination of voting system source code and a review of voting system accessibility for voters with disabilities. Three voting systems, deployed in 44 of California's 58 counties, were subject to the initial review. That review, conducted under the auspices of the Secretary of State's office by nationally recognized computer security experts from the University of California, other academic institutions and the private sector, uncovered numerous vulnerabilities that reviewers and "Red Team" testers documented and demonstrated. In response to these findings, the Secretary of State withdrew approval and approved with conditions certain voting systems on August 3, 2007, and, in collaboration and cooperation with vendors and elections officials, created new use procedures, including rigorous security and post-election auditing requirements for those voting systems.

Some voting systems were not reviewed where the manufacturer stated it would bring forward new, upgraded systems for testing and approval. In cases where the manufacturer did not bring forward a new system, the existing voting system was subjected to equally stringent security and auditing requirements.

There was also a great deal of change that occurred at the Secretary of State's office between the submission of California's last State Plan update in 2004 (published by the EAC in the Federal Register on September 30, 2004) and 2008. In addition to four changes of administration at the California Secretary of State's office since 2004, nine statewide elections were conducted between 2002 and 2008. There have also been changes in law – most notably the requirement for an AVVPAT for DRE voting systems and budgetary decisions – that have impacted HAVA implementation. Finally, EAC guidance on the use of HAVA funding has clarified the allowable use of resources in ways that significantly affect the ability to implement HAVA as envisioned in the initial State Plan. The EAC guidance may be found online at www.eac.gov/election/advisories%20and%20guidance (see FAO 08-011). That guidance could be reconsidered by the EAC. The Secretary of State will continue to monitor EAC guidance to ensure that its HAVA program is structured accordingly.

With that overview and status report on HAVA implementation in mind, California is proposing to adopt the following update to its HAVA State Plan. This State Plan acknowledges the progress made to date to implement HAVA requirements and builds upon that progress. Pursuant to HAVA requirements, this State Plan, following publication and public comment in California, will be submitted to the EAC for publication in the Federal Register.

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HAVA California Preliminary State Plan Update

Introduction

In California's initial 2003 State Plan, which was incorporated into its 2004 State Plan update, a set of goals were articulated. Some progress has been made, and continues to be made, toward these ambitious goals. With seven years of experience administering HAVA in California, the Secretary of State is re-stating and adding to the goals it will pursue during future HAVA implementation efforts. These goals will inform future expenditures of HAVA funds as outlined in Section 6 of this plan:

- Every eligible citizen, including voters with disabilities or language assistance needs, will be afforded the opportunity to vote privately, securely and independently
- Every elections official and poll worker will be thoroughly trained and committed to treating every eligible voter with respect and courtesy, and help them to vote easily and securely
- Every eligible voter will be provided ongoing, easily accessible information regarding candidates, measures and the voting process in simple, accurate terms and in a language and format that she or he can best understand
- Voters will be informed of their rights prior to voting, as they vote at the polls and after they vote
- California will pursue removing artificial barriers that preclude eligible citizens from registering to vote
- Voting equipment and ballots will be easy to use, accessible and flawlessly capture and report voter intent
- All voters, especially those who are new to voting, will be encouraged to actively participate in the electoral process as voters, poll workers, and interested citizens, with education regarding the voting process beginning as early as possible
- Overseas and military voters will be allowed to register and to vote conveniently and safely wherever they might be
- No eligible citizen will be turned away at a polling place on Election Day without being able to vote a regular or provisional ballot
- Counties and the State will share best practices in election administration to improve the efficiency, service, accuracy, and security of elections

- The Secretary of State will ensure the statewide voter registration database required by HAVA is designed and operated in a manner that is consistent with HAVA Section 303 requirements to ensure that every legally registered voter is included in the VoteCal system and that no eligible voters be removed from the list

It is important to understand the historical, legal, demographic and logistical environment in which these goals will be pursued because this environment provides both challenges and opportunities.

California's history is filled with leadership in electoral reform and innovation. Over decades, proactive policies and programs intended to help and encourage people to exercise their right to self-governance have been enacted. Implementation of those policies and programs has been directly affected by the state's size and diversity.

California's total population grants the state 53 seats in the House of Representatives and more than 10 percent of the seats in the Electoral College. Federal elections are conducted by the state's 58 counties under the direction of the California Secretary of State, who serves as the state's Chief Elections Officer.

California's most populous county, Los Angeles, is also the country's largest voting jurisdiction with a voting age population of 5,775,838, while the state's smallest county, Alpine, is home to 901 people of voting age. The most recent U.S. Census data available indicates that California, with a voting age population of 23,208,710, has as many as 10 million more citizens eligible to vote than the next most populous state, Texas. Los Angeles County alone is home to a voting age population that is larger than the voting age population in 38 states.

There is virtually no public process that rivals a statewide election in its magnitude or its importance. On Election Day, millions of people participate in a process that defines the core of our democracy. Conducting flawless elections is the goal of every elections official, but in California meeting that goal is particularly challenging because of an array of unique circumstances and because the reforms designed to further the opportunity for citizen participation in the political process have grown in number and complexity. These factors include:

- **Thousands of Voting Precincts** – For a regularly scheduled statewide election, California has some 25,000 election precincts. Staffing thousands of polling places for statewide elections requires election officials to recruit more than 100,000 reliable poll workers, who must be trained to serve millions of voters on a single day at conveniently-located sites that are accessible to voters with disabilities. The tasks of recruiting a sufficient number of poll workers, training them to adhere to and educate voters on complex laws and processes, deploying new voting systems, and locating appropriate polling places, are continuing challenges for California's elections officials.

- **A Multiplicity of Election Materials** - For each statewide federal election, California mails to each household with a registered voter a Voter Information Guide containing information on state ballot measures, statewide candidates, qualified political parties and more. Local elections officials send each voter a sample ballot that includes critical information such as polling place locations, instructions on how to use voting equipment and other information. Elections materials are also made available to voters via state and local websites and at polling places on Election Day. The tasks of preparing and providing accurate, informative and yet easy-to-use materials that are accessible to voters with disabilities in up to seven languages are staggering for election officials, while reviewing the full complement of comprehensive materials available can be overwhelming to some voters.

- **Ballot Complexity** - California ballots are typically long, reflecting California's tradition of engaging its voters in self-governance. Ballots containing myriad state and local ballot measures and candidate races present voters with an array of important choices. Some believe the complexity of the ballot may complicate efforts to encourage people to register and to vote, although surveys indicate that many voters prefer to be offered these choices to participate as fully and directly as possible in policy making.

- **Thousands of Different Ballot Types** - California elections officials must configure, in statewide primary elections, more than 60,000 different ballot types to accommodate the plethora of political subdivisions that serve people and, in California's most populous jurisdiction, ballots that must be printed in seven languages.

- **Different Political Party Participation Rules** - California has six political parties qualified to participate in primary elections. California's modified open primary means party-specific ballots must be prepared in primary elections for the voters registered with each party. Voters who "decline-to-state" an affiliation with a political party have the option to vote in primary elections only for measures and non-partisan candidates, or to request a ballot to participate in the nomination process for political parties that allow these voters to cast a ballot in the party's nominating process. The decision of each qualified party to allow decline-to-state voters to participate in its nominating process can differ from election cycle to election cycle. This process has greatly complicated ballot ordering for election officials who must estimate the number of decline-to-state voters that may be likely to request a partisan ballot. Pursuant to state law, the number and type of ballots requested and cast by decline-to-state voters must also be tracked by elections officials.

- **A Variety of Voting Systems** - At the time the initial State Plan was drafted in 2003, and prior to HAVA requirements taking effect, the Secretary of State reported that there were 19 companies manufacturing 23 voting systems approved for use in California. As of August 3, 2007 – when the results of the state's

comprehensive voting system review were announced – five manufacturers were supplying California counties with 17 distinct voting systems to comply with state and federal HAVA requirements. These voting systems included two basic categories of systems: optical scan and direct-recording electronic (DRE/touchscreen). Counties are free to deploy any voting system approved for use by the Secretary of State that complies with state and federal requirements, including meeting accessibility requirements for voters with disabilities, leading to widespread diversity of voting systems among counties (and even within counties, which often utilize more than one voting system to meet polling places needs). The array of available systems, while preserving county autonomy to choose the voting system that best meets its needs and serve other public policy goals, complicates efforts to ensure uniform and consistent training of poll workers, makes educating voters and the media about voting system issues difficult, and may lead to confusion for voters who move from one county to another.

- **Early Voting Laws and Voter Registration Deadline** - Californians are entitled to vote by mail and in person at election offices or other locations designated by county election officials 29 days before Election Day. Californians are now also entitled to register to vote up to 15 days prior to Election Day. The difference between the deadlines for early voting and registering to vote are challenging because early voting commences before the final voter rolls are set for the election. Taken together, early voting, a 15-day deadline for registering to vote, and the need to deploy multiple voting systems to meet voters' needs, including meeting accessibility requirements for voters with disabilities, reduces the amount of time that elections officials have to prepare for an election, creates new logistical challenges for election officials and creates additional choices for voters in terms of the timing of their voting.

- **Provisional Balloting** - Since the 1980s, California law has permitted a voter whose eligibility to vote cannot be immediately established at a polling place to cast a provisional ballot. At the 2008 General Election, 798,332 provisional ballots were cast, of which 657,053 (82 percent) were counted. This is a significant difference compared to the estimates provided in the initial, 2003 State Plan, where it was reported that an estimated 200,000 provisional ballots were cast in the 2002 General Election, of which an estimated 60 percent were ultimately counted. While provisional voting permits immediate access to the franchise for voters, including voters with disabilities through the use of accessible voting equipment for casting provisional ballots, the process is resource intensive, and it increases the need for additional training of poll workers and requires greater education of voters with respect to the provisional voting process.

- **Voting by Mail** - At the November 2008 General Election, more than 41.6 percent of voters (5.7 million) cast vote-by-mail ballots, continuing the upward trend noted in California's initial 2003 State Plan, where it was reported that the November 2002 General Election saw more than 27 percent of voters cast ballots by mail. State law enacted in 2001, which allows any voter to become a "permanent absentee voter," (now referred to in law as a "permanent vote-by-mail voter",) accelerated the trend. Again, this innovation, while convenient for voters, often requires a different vote tabulating system from the one used to tabulate votes cast in person, and sometimes delays announcing elections results, since many vote-by-mail ballots are processed after Election Day.

- **Language Diversity** - To improve access to vital election information, to ensure that all citizens can participate fully in the electoral process, and pursuant to state and federal law, election materials are produced and oral assistance is provided in a variety of languages in California. For example, Los Angeles County provides ballots, sample ballots, and other materials, in seven languages: English, Chinese, Japanese, Korean, Spanish, Tagalog and Vietnamese. The entire state is required by the federal Voting Rights Act to provide election materials in Spanish, and 26 of California's 58 counties are required to provide bilingual voting assistance in at least one language other than English. Some jurisdictions, in response to local needs and pursuant to state law, provide written and oral assistance in other languages. This adds to the challenge of conducting an error-free election.

- **Varied Geography** - California has some of the most urban and most rural areas in the country. Densely populated areas such as San Francisco and Los Angeles bear little resemblance to the wide-open expanses of Modoc County, the forests of Trinity County or the deserts of San Bernardino County, the largest county, by area, in the country. The election processes employed to deliver democracy directly to voters in California's counties reflect that geographic diversity, challenging elections officials and voters alike.

- **New Primary Election System** – At the June 8, 2010, statewide Primary Election voters approved a new primary election process. Primary election winners, those that will appear as choices for voters on the general election ballot, will be the two candidates receiving the most votes in the primary election, regardless of party affiliation. Previously, the primary election served as the nominating process for political parties' candidates to partisan office, with each party nominee moving on to the general election ballot. This change and others to the primary election process, which does not affect the process for selection of Presidential nominees or selection of party members to county central committees, will create new challenges for elections officials in ballot preparation, ballot layout and election results tabulation. Voters will also need to be informed about this electoral change.

California election officials continually meet these challenges in an effort to provide full access to the electoral process. In fact, many of the provisions in HAVA were already features of California law, regulation or procedure at the time of HAVA's enactment. For example:

- California's voter registration-by-mail became law in 1975 and vote-by-mail on demand in 1978
- Permanent vote-by-mail balloting for any voter who requested it was enacted in 2001
- California voters approved Proposition 41 at the March 5, 2002, election – eight months before the enactment of HAVA – which provided counties access to $200 million in state bond funding to upgrade voting systems, including replacement of prescored punch card voting machines in California
- California created a statewide database in 1995, known as CalVoter, that assisted counties with list maintenance, duplicate-record checking. This system was significantly upgraded as part of the state's efforts to achieve interim compliance with HAVA Section 303 requirements
- California permits voters to correct or replace ballots before being cast
- Provisional ballots have been a feature of California law since the 1980s
- A statewide complaint procedure for making allegations regarding violations of elections laws is in place, including a toll-free telephone number (800) 345-VOTE) for making complaints
- Efforts were made to accommodate the needs of voters with disabilities and people from minority language communities

In 2007, California also took a leadership role in the effort to address unresolved concerns with the security and reliability of voting systems by undertaking a "top-to-bottom review" of voting systems approved for use in California. The review uncovered numerous design and performance issues that posed potentially serious consequences, including the potential that election results could be affected or altered. Elections officials from other states who followed California's lead and conducted similar, rigorous reviews of voting systems reached similar conclusions. As a result of California's "top-to-bottom" voting system review, serious voting system vulnerabilities are being addressed in California through the adoption of new security procedures and new use procedures. Voting system manufacturers report they are undertaking efforts to improve the design and security of voting systems.

As a part of its top-to-bottom review of voting systems, California contracted with federally recognized accessibility experts to conduct the first-ever accessibility review using the 2005 voluntary voting system guideline accessibility standards promulgated by the EAC. The primary focus was to identify whether the voting systems were sufficiently accessible to voters with disabilities and to assess whether the voting system was capable of providing alternative language accessibility by displaying Chinese and Spanish language ballots. Alternative language capabilities were evaluated for the ability of the voting system to be used by persons with or without disabilities.

The review included testing physical accessibility and language accessibility attributes of the voting systems, as well as testing usability and accessibility of voting systems for casting a ballot. Expert analyses of the voting systems and the test methodology were conducted, which was followed by user testing. Forty-five volunteer "test voters" cast test ballots using selected contests from the 2004 General Election that included multiple candidates for federal and state offices, as well as ballot measures and confirmation of judges. The test voters cast ballots containing at least nine contests and as many as 23. The expert analyses and test voting sessions were video-taped. The authors, who among them report more than 60 years of experience in technology and accessibility interfacing, included in the report a thorough list of mitigation measures for vendors to consider that could improve accessibility as well as recommendations for elections officials on polling place set-up of voting equipment. The accessibility testing protocols used in the review have been adopted by the Secretary of State and incorporated as a part of the state's voting system approval process. A copy of the voting system accessibility review can be found on-line at www.sos.ca.gov/elections/elections_vsr.htm (see UC Accessibility Report).

Now, more than seven years after the enactment of HAVA and with the findings of a comprehensive review of voting systems completed, it is a good time to evaluate California's progress on HAVA implementation and to determine how much more remains to be done. In the November 2008 General Election, 79.4 percent of registered voters cast ballots, which represents 59.2 percent of all those eligible to participate. The goal of restoring confidence in the integrity of the electoral system must be realized to help bring voters back to the polls and to engage those who are not yet participating. HAVA implementation should serve as one critical building block in California's efforts to reconnect citizens to the electoral process.

III. State Plan by Sections

Section 254(a) requires the State Plan to include a description of each of thirteen elements. Each of the thirteen elements is treated as a "section" of the California State Plan, as set forth below:

Section 1

(Section 254(a)(1))

How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under Section 251(a)(2), to carry out other activities to improve the administration of elections.

Title III, commencing with Section 301, sets forth "Uniform and Non-Discriminatory Election Technology and Administration Requirements."

Below is a summary of the requirements of HAVA and how California intends to use the requirements payment to comply with that federal law. It should be noted that, pursuant to Section 305, the specific choices on the methods of complying with the requirements of Title III are left to the discretion of the State.

A. Voting Systems Standards (Section 301(a))

Federal Law:

HAVA requires that each voting system used in a federal election on or after January 1, 2006, meet each of the following requirements:

(1) Balloting errors:

(a) Voter verification of ballot selections (and correction)

The voting system must:

(i) permit the voter to verify privately and independently the votes selected before casting a ballot;

(ii) permit the voter privately and independently to change or correct a ballot before it is cast (including receiving a replacement ballot).

(Note that the requirement that a voting system permit the voter to verify the votes selected before casting a ballot may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the new requirements of HAVA.)

(b) Voter notice on overvoting (and correction)

The voting system must:

(i) notify the voter of an overvote (casting votes for more candidates than allowed);

(ii) notify the voter of the effect of overvoting (i.e., the vote for that office will not be counted);

(iii) provide the voter with the opportunity to correct the ballot, if he or she has overvoted.

(c) Paper-based voting systems compliance

Paper-based voting systems (including vote-by-mail balloting systems) may meet the above requirements with:

(i) voting-system specific voter education programs notifying the voter of the effect of overvoting;

(ii) instructions on how to correct a ballot before it is cast (including instructions on obtaining a replacement ballot); and

(iii) system designs that preserve voter confidentiality.

(2) Voting system audit requirements:

The voting system must:

(a) produce a record with an audit capacity (The paper record produced shall be available as an official record for purposes of a recount.);

(b) produce a permanent paper record with a manual audit capacity;

(c) allow the voter to correct any error before the permanent paper record is produced.

(3) Accessibility for individuals with disabilities:

The voting system must:

(a) be accessible to voters with disabilities, including voters with visual impairment, in a manner that provides the same opportunity

for access and participation, including privacy and independence, as for other voters.

(The above requirement is met by providing at least one DRE voting unit, or other voting system equipped for individuals with disabilities at each polling place.)

(All voting systems purchased with Title II funding after January 1, 2007, shall comply with these requirements.)

(4) Alternative language accessibility:

The voting system must:

(a) meet all requirements of alternative language access of Section 203 of the Voting Rights Act of 1965 (42 USC 1973aa-1a).

(5) Error Rates:

The voting system must:

(a) meet FEC guidelines (Section 3.2.1) for voting system error rates (errors attributable only to system errors, and not an act of the voter) in effect at the time of HAVA's enactment (October 29, 2002).

(6) Definition of Vote:

Each state shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

HAVA Compliance with Voting Systems Standards

Following the 2000 Presidential election, California joined the nation in scrutinizing whether the punch card voting systems widely in use disproportionately disenfranchised large numbers of voters. Common Cause and the American Civil Liberties Union filed a lawsuit to challenge the use of pre-scored, punch card voting systems based on field studies and reports that indicated a higher error rate for these systems. The lawsuit was settled by then-Secretary of State Bill Jones after he withdrew approval for pre-scored punch card voting systems used by California counties. Shortly thereafter, the State Legislature placed on the March 2, 2002, ballot the $200 million Voting Modernization Bond Act to provide money to counties to upgrade voting systems, including those that had previously used pre-scored, punch card voting systems.

With the enactment of HAVA, a punch card voting system replacement incentive program and new federal voting system standards were created. These programs took aim at the concerns about the effectiveness of punch card voting systems to accurately capture voter intent and the desire to improve accessibility to the ballot for voters with disabilities and voters with alternative language needs.

On December 19, 2005, the Secretary of State began the process to enter into contracts with California's 58 counties to allocate $195 million in HAVA Title II, Section 251 requirements payment funding. The contracts, developed through a collaborative process with counties to determine the appropriate level of funding, were targeted primarily at helping counties buy and deploy voting systems intended to be compliant with HAVA, and associated costs such as voter education and poll worker training. These funds were used by counties in conjunction with $200 million in state Voting Modernization Bond Act funding, and HAVA Section 102 punch card voting system replacement funds, previously distributed through the Secretary of State beginning in 2004.

During this time, however, computer scientists and others began expressing serious concerns about whether DRE voting systems could be considered secure absent an independent and thorough review of the proprietary source code used to operate these voting systems. Reports of failures and anomalies in voting system performance surfaced around the country, which fueled the mounting criticism and concern. One response to the issues being presented was California legislative enactment of a requirement, effective on January 1, 2006, that all DRE voting systems be equipped with an accessible voter-verified paper audit trail (AVVPAT) to provide an additional audit mechanism and to increase transparency of the electoral process. Less than four months before HAVA's definitive January 1, 2006, deadline to deploy HAVA-compliant voting systems, the U.S. Government Accountability Office (GAO) – the investigative arm of the Congress – issued a report noting these concerns and observing potential shortcomings in the security and reliability of voting systems. The GAO report was emblematic of concerns that voting system testing and approval processes were not adequately uncovering deficiencies in voting system design and performance. At the time of the GAO report, the EAC had not yet issued its required voluntary voting system guidelines (VVSG) and had not yet assumed responsibility for the federal testing and certification regime, which was then operating under the auspices of the National Association of Election Directors (NASED). California's Secretary of State implemented programs to provide some additional safeguards, including "volume testing" of equipment to test the reliability of voting system production models in addition to the prototypes typically tested, and a "parallel monitoring" program that audited the performance and accuracy of voting systems on Election Day under Election Day conditions. Both of these programs were designed to ensure that voting systems performed in the field the way prototypes tested in laboratory settings performed.

The introduction of new voting systems was accompanied by Secretary of State programs to educate poll workers and promote voter understanding of new voting equipment, including use by voters with disabilities and voters with alternative language needs. The programs included:

- Developing new voting system use procedures
- Issuing poll worker training guidelines released in 2006
- Creating a HAVA compliance manual produced by the Secretary of State in collaboration with county elections officials
- Providing instructions on the use of new voting systems, which each county elections office included in sample ballots mailed to each voter, and which were also posted on the Secretary of State's website and each county's website
- Conducting outreach and education activities in partnership with counties, schools, state and local government, and community service organizations such as the League of Women Voters, and Independent Living Centers (private, nonprofit, corporations that provide services to maximize the independence of individuals with disabilities and the accessibility of the communities they live in)

These efforts were accompanied by voter education programs authorized by HAVA Section 301 (a)(1)(B) to educate voters on correction of overvotes where a paper-based, centrally tabulated voting system was in use through independent mailings to voters, and mailings in conjunction with delivery of sample ballots or vote-by-mail ballots.

At the same time, elections officials and voting system vendors were seeking to comply with California's AVVPAT requirement and federal HAVA voting system requirements. During the final months leading up to HAVA's January 1, 2006, deadline and even during the 2006 election cycle, California completed its final testing and approval of voting systems that complied with state law and exhibited the functionality required by HAVA voting system standards. By the November 2006 General Election, all California counties had purchased and deployed these voting systems in accordance with HAVA requirements, including deploying at each polling place at least one DRE voting unit, or one voting unit designed to be accessible to voters with disabilities.

Clearly, this rush to compliance was not an optimal implementation scenario. Delays by vendors in bringing forward voting systems for certification as promised, and the discovery of an oversight in the federal testing process that forced California to conduct its own independent review of one of these voting systems concurrent with federal re-testing, resulted in just-in-time compliance in many counties. Privately, county elections officials frustrated by the lengthy voting system certification process, concerned about local controversy over voting system reliability and security, and worried by the ever-shortening implementation schedule, expressed concern about being backed into compliance at a time of great uncertainty.

In the face of serious, yet unresolved questions, about voting system reliability and security, and the apparent inability of the voting system testing and certification processes to ensure adequate performance of voting systems, California undertook a comprehensive, top-to-bottom review aimed at the heart of the issue – voting systems' source code. The California Legislature augmented the Secretary of State's budget in 2006 to permit a review of voting systems' source code. Using that funding, and money from voting system vendors that was required for source code review on a contingency basis as a condition of prior voting system certification, the Secretary of State commissioned, under the auspices of the University of California, a top-to-bottom review of voting systems. That review also included, for the first time, accessibility testing as a separate, specific component of the testing process.

Under the top-to-bottom review, each voting system vendor was offered the opportunity to subject its certified system to the top-to-bottom review, or to forgo the review if the vendor did not intend for counties to use their system during the 2008 election cycle. The Secretary of State reserved the right to impose new, additional conditions on the use of any existing voting system if the vendor failed to bring forward a new system for certification testing as promised.

On August 3, 2007, the Secretary of State released the results of the top-to-bottom review and withdrew approval and approved with conditions the three voting systems subjected to the review. Reports and approval orders issued in accord with the findings of the top-to-bottom review can be found on the Secretary of State's website at www.sos.ca.gov/elections/elections_vsr.htm.

In short, computer scientists discovered, documented and, in some cases, demonstrated source code and security vulnerabilities that called into question the security of the voting systems. The review cast doubt on the ability to prevent manipulation of voting systems that could affect an election's outcome by exploiting these vulnerabilities, or detect after the fact that these vulnerabilities had been exploited, in ways that could affect the outcome of an election. Furthermore, the review found that malicious software code could propagate throughout an entire voting system, including infecting the central tabulation system. Based on these findings, for two voting systems the Secretary of State's approval orders restricted the use of DRE voting units to one voting unit per polling place, which is the minimum number required by the HAVA 301 (a)(3) accessibility requirements. Where a county had previously deployed additional DRE voting units at the polling place, an optical scan balloting system was used to take its place. Additionally, the Secretary of State imposed new security measures on all systems to limit and prevent potential exploitation of voting system source code vulnerabilities. New use procedures were crafted to ensure consistent, uniform implementation of security measures. Finally, new, more stringent post-election auditing requirements of results produced by the voting systems examined in the review were put in place to ensure that tampering or errors did not produce incorrect outcomes in close contests.

Following the review and issuance of approval orders, 56 of 58 counties relied largely on optical scan voting for polling place needs, while deploying DRE voting units to meet HAVA's accessibility requirements. This closely mirrors what happened in the states of New Mexico and Florida following actions taken in those states that restricted the use of DRE voting equipment. Furthermore, the findings of the California top-to-bottom review have been largely confirmed by similar reviews in Ohio and Colorado that occurred after the California review.

California's voting system testing and approval process has been modified to incorporate the security and accessibility elements employed in the top-to-bottom review. Any new voting system brought forward for certification will be subjected to a testing and approval process to ensure the systems are secure, accurate, reliable and accessible.

California was the first state to use, and continues to use, the disability standards in the federal 2005 Voluntary Voting System Guidelines (VVSG) when testing and approving voting systems. Those standards include provisions for usability and accessibility for vision, dexterity, mobility, hearing, speech, English proficiency and cognition (see Section 3.2 of Volume I of the VVSG on pages 53-64). These testing efforts examine each voting system with the help of voters with a full range of disabilities. The Secretary of State has also sought the input of a Voting Accessibility Advisory Committee (VAAC), providing the VAAC with information on voting system standards and briefings on the voting system testing and approval process, while seeking its advice on proposed standards and the voting system approval process.

In addition to meeting federal requirements, the Secretary of State has made progress on meeting unique local needs by certifying the first voting system in California for the purpose of employing a ranked-choice voting process. Based on the history of HAVA voting system standard implementation described above, compliance with HAVA voting system standards will include the following components:

- Continued reliance upon the voting system contracts issued in 2005 to help defray allowable costs for voting system equipment purchases and associated costs, including voter education and poll worker training expenses, pursuant to EAC guidance.

- Voting systems brought forward for approval will be subjected to the enhanced voting system testing regime used during the top-to-bottom review, which will also include accessibility testing and volume testing of the voting system. The approval process will include, pursuant to state law, a public hearing. DRE voting units, pursuant to state law, will continue to be required to receive federal approval prior to being considered for state approval. The EAC 2005 voluntary voting system guidelines (VVSG), which are now the basis for federal approval, and the recently released VVSG update will be evaluated and considered by California to determine the implications for the state's testing and approval protocols.

- Counties will continue to ensure that voter information provided in sample ballots, on county websites, and given to voters as a part of voter education and outreach efforts include instructions on how to use the county's voting system, including any voter education program necessary to inform voters how to avoid overvoting, and correct ballot errors. The Secretary of State will also continue to host on its website instructions on how to use voting systems deployed by counties. Where applicable, county voting systems will deploy precinct-based scanners for optical scan ballots to notify voters of ballot errors. DRE voting units will continue to provide overvote protection by preventing a voter from voting more than allowed for ballot measures and offices, and undervote protection by providing a ballot summary screen, with an option for correcting the ballot before it is cast.

- Each voting system will continue to provide for auditing, producing a paper record with a manual audit capacity that allows a voter to correct any error before a permanent paper record is produced. Such paper records in California are now subject to more rigorous, post-election audit requirements.

- Each county will continue to deploy at each polling place at least one voting unit that provides voters with disabilities the opportunity to vote privately and independently.

- All voting systems, and voting materials, will continue to meet the requirements of alternative language access of Section 203 of the Voting Rights Act by providing for ballot translation or transliteration and translation or transliteration of other materials into required languages.

- All voting systems will continue to be subjected to federal approval and applicable federal voting system error rates; California's voting system testing and approval process will also independently note error rates exhibited by voting systems tested through volume testing.

- California developed a uniform definition of a vote for each type of voting system through a cooperative effort with the counties. The Secretary of State will continue to rely upon that uniform definition of a vote, or any successor uniform definition of a vote that replaces that uniform definition of a vote. Further efforts to refine the uniform definition of a vote were pursued in 2009 through Secretary of State-sponsored SB 387 (Hancock), which sought to clarify that extraneous markings on a ballot would not be cause for invalidating the ballot. That bill was vetoed by the Governor, however. The current uniform definition of vote is available on the Secretary of State's website at www.sos.ca.gov/elections/hava.htm

B. Provisional Voting (Section 302):

Federal Law:

Section 302(a) (p. 102) requires that "provisional voting" be permitted in federal elections on or after January 1, 2004. Under HAVA, if a voter's name does not appear on the official list, or the elections official asserts the voter is ineligible, the voter is entitled to cast a provisional ballot as follows:

(a) Elections officials at polling place notify voters of the provisional ballot option;

(b) Voter executes written affirmation stating:

He or she is a registered voter in the jurisdiction; and
He or she is eligible to vote;

(c) The voted ballot or written affirmation information is promptly transmitted to appropriate state or local elections official for verification;

(d) If the information is verified, the ballot shall be counted;

(e) At the time the voter casts the ballot, the voter shall be provided with information about the existence of a free access system (e.g. secure, confidential telephonic or Internet-based system) that restricts access to information on individual ballots, so that only the voter who casts the ballot may determine her or his individual ballot status;

(f) State or local officials shall establish the free access system.

(HAVA also requires (Section 302(c)) that voters who cast ballots after the normal poll closing as a result of a Federal or state order, vote by provisional ballot that is segregated from regular provisional ballots.)

HAVA Compliance with Provisional Ballot Requirements

As previously noted, California law is consistent with the dictates of HAVA regarding the right of voters to receive a provisional ballot, when those voters' registration status and eligibility to vote cannot be immediately ascertained. To obtain state approval, every voting system must include an accessible device with provisional voting capability. The right to receive an accessible provisional ballot is also supported by state law at Elections Code section 19227. Additionally, California counties, under the direction and continued oversight of the Secretary of State's office, have all implemented a "free access" system available to provisional voters to determine if their ballot was counted, and, if not, why not. A complete list of each county's free access system and a description of how voters can access the system (whether by phone or via the Internet) is provided on the Secretary of State's website at www.sos.ca.gov/elections/elections_provisional.htm.

C. Voter Information Requirements (Section 302(b))

Federal Law:

Section 302(b) requires that, with respect to federal elections held on or after January 1, 2004, elections officials post specified voting information at each polling place on Election Day, including:

(a) a sample ballot for that election;

(b) the election date and polling place hours;

(c) voting instructions, including provisional voting instructions;

(d) mail-in registrant and first-time voter instructions;

(e) general voting rights information, including the right to cast a provisional ballot and instructions on how to contact appropriate officials regarding allegations of violations;

(f) general information on legal prohibitions on fraud and misrepresentation.

HAVA Compliance with Voting Information Requirements

As previously noted, California law goes further than HAVA's minimum requirements with respect to voting information requirements. At each election, households with registered voters receive a Voter Information Guide containing information on statewide measures and candidates, and other critical information, including information about HAVA. Additionally, each county sends to every registered voter a sample ballot that includes not only ballot information, but also HAVA information, such as instructions on how to cast a ballot on that county's voting system. These materials, and other required HAVA postings are available at polling places as well, including, at county request, a Voter Bill of Rights poster supplied by the Secretary of State that includes HAVA required information. Counties and the Secretary of State post these materials on websites. Proactive efforts to educate voters, with a primary focus on new voting system use, were also encouraged by allowing the expense of incorporating new HAVA requirements into materials and outreach programs to be reimbursed as a part of the counties' voting system upgrade efforts. The cost of meeting requirements to provide voter information that pre-date HAVA are not reimbursed with HAVA funds.

Counties used a limited amount of funding for this purpose – approximately $7.9 million statewide. Subsequent EAC guidance has clarified that HAVA funding used for voter education programs must focus on the use of new voting systems and efforts that provide overvote protection, including receiving a replacement paper ballot to correct ballot errors.

To support county efforts, statewide voter education efforts were also undertaken using Section 101 funding. Those statewide efforts included developing voter education materials used by state and local officials, and community-based organizations through partnerships with state agencies, such as the Department of Education, partnerships with local elections officials and partnerships with nonprofit groups such as Independent Living Centers. These materials were also made available on state, county and nonprofit websites, including the League of Women Voters of California Smart Voter webpage and in the League-sponsored Easy Voter Guide.

In California's initial State Plan, published on July 17, 2003, the Secretary of State proposed to "consider developing voter information in appropriate languages for posting at polling places" and to work to "ensure that all information provided at polling places be accessible to the widest possible audience." The Secretary of State developed voter information for posting at polling places pursuant to California Elections Code section 2300. The Voter Bill of Rights poster outlined in Elections Code section 2300 is provided to counties at their request in required languages, and production of the Voter Bill of Rights poster is partially funded by HAVA Section 101 funds. This posting supplements information provided in sample ballots, which are mailed to registered voters and available at polling places for voters who do not receive one or any voter who wishes to view one at the polling place. Additionally, the Secretary of State has made statewide electoral information in the Voter Information Guide (VIG) available in several languages and in alternative formats such as audiotapes, which are available on request; MP3 files and other materials available on its website; and produced in American Sign Language a video version of the statewide "Your Voting Rights" brochure that is posted on the Secretary of State website and available on DVD.

D. Statewide Voter Registration Database Requirements (Section 303)

Federal Law:

Section 303 requires that the Secretary of State, as the Chief Elections Officer, implement, in a uniform and nondiscriminatory manner, by January 1, 2004, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each such voter.

(1) The computerized list shall:

(a) be the official voter registration list for federal elections;

(b) serve as the single system for storing and managing the official list;

(c) contain the name and registration information of every registered voter;

(d) contain a unique identifier (driver's license number, partial social security number, or assigned number) for each voter;

(e) be coordinated with other state databases (California Department of Corrections and Rehabilitation; California Department of Public Health; California Department of Motor Vehicles; other state social service agencies and the Social Security Administration);

(f) provide immediate, electronic access to any elections official in the state;

(g) allow for electronically entering data by any local elections official on an expedited basis;

(h) be supported by the State.

(2) Maintenance of the official list shall be performed on a regular basis as follows:

(a) voters names shall be removed in accordance with the National Voter Registration Act (42 U.S.C. § 1973gg, Section 8, (a)(4), (c)(2), (d) and (e);

(b) ineligible voters shall be removed in accordance with the NVRA for felony status (42 U.S.C. § 1973gg, 6(a)(3)(B)); for death (6(a)(4)(A)); or in accordance with state law;

(c) each registered voter's name shall appear on the list;

(d) only ineligible voters or voters not registered shall be removed from the list;

(e) duplicate names shall be removed from the list;

(f) other reasonable efforts to remove ineligible voters, consistent with the NVRA (42 U.S.C. § 1973gg, et. seq.) that ensure eligible voters are not removed in error, including removing registrants who have not responded to a notice and who have not voted in two consecutive general elections for federal office shall be removed from the official list of eligible voters, except that no registrant shall be removed solely by reason of failure to vote.

HAVA Compliance with Statewide Database Requirements

As previously noted, California exercised the option to extend the HAVA implementation deadline from January 1, 2004, to January 1, 2006, to comply with Section 303, statewide voter registration list requirements.

California requested a US DOJ opinion on January 11, 2005, about its efforts to comply with Section 303. On April 19, 2005, US DOJ representatives were briefed by California Secretary of State staff on the plans to comply with these requirements. In response, on May 25, 2005, the US DOJ provided the Secretary of State with a detailed 10-page letter that opined California's plans to implement an "interim" technological and procedural program to comply with Section 303 were inadequate. The letter stated that US DOJ was "prepared to move forward with enforcement action as appropriate to ensure compliance with HAVA's requirements." The letter went on to express interest in working with

California to "implement HAVA's terms to the fullest extent possible in the short term, and longer term actions to provide full HAVA compliance within the shortest practicable time frame."

In early June 2005, the Secretary of State began discussions with the US DOJ over what steps could be taken to implement HAVA Section 303 requirements to the fullest extent possible. Those discussions culminated in a November 2, 2005, Memorandum of Agreement (MOA) outlining the Secretary of State's responsibilities. In short, the agreement required that California establish a statewide voter registration list by integrating and synchronizing the voter rolls from the 58 counties, which until the enactment of HAVA were the sole, official repositories for voter registration rolls, into a single, uniform system to serve as the official voter registration list for election purposes. That system was also required to be configured to accommodate verification of registrants' driver's license, California ID or partial social security number data, as required by HAVA, and to receive information from other state agencies for list maintenance purposes.

During the implementation phase of this system in California – an upgraded version of the state's pre-existing Calvoter system – a federal judge ruled on challenges to procedures governing the verification process employed by the State of Washington to match driver's license and partial social security data to registrants' records. Litigants argued that precluding registration by potential voters based on the failure to match records using the strict criteria employed by the State of Washington amounted to inappropriately disenfranchising voters by creating a new registration requirement. A federal judge agreed that the State of Washington's interpretation was overly restrictive. California modified its procedures in accordance with that Washington State ruling to ensure that any failure to verify a registrant's identification data did not prevent a person from registering to vote. The decision by a federal judge clarified that in these cases states should issue a unique identifier to the voter when it was not possible to verify the data provided.

The enhanced Calvoter statewide voter registration system was fully operational during the 2006 election cycle.

Pursuant to the November 2, 2005, MOA however, California must continue to work toward a permanent solution because, among other things, the upgraded Calvoter system is not a single, centralized list that provides for the use of a uniform voter registration process throughout the state. California awarded a proposal to a winning bidder, in accordance with state contracting requirements, to establish a permanent statewide voter registration list – the proposed VoteCal system.

To move forward with this effort, the Secretary of State took work initially done to evaluate a long-term compliance strategy to meet HAVA Section 303 requirements compiled by a previous administration and drafted a comprehensive Feasibility Study Report (FSR), which was approved on April 14, 2006. An FSR, required under state law, serves as a roadmap to develop and implement major technology projects. After approval of the FSR, Debra Bowen was sworn as Secretary of State on January 8, 2007. During the early months of her administration, the Secretary of State visited other states that had deployed HAVA-compliant voter registration databases to better inform the office on the efficacy of approaches to compliance undertaken by other states. She also appointed a VoteCal advisory committee comprised of county elections officials and interested stakeholders to provide input on the project and the tasks the system must perform to function properly for its intended purpose. That input was taken into account when drafting the Request for Proposal (RFP) to solicit bids for the project. The advisory committee met three times between May 10, 2007, and February 25, 2008. The February 25, 2008, meeting was conducted following the release of the Request for Proposal (RFP) for the VoteCal project on December 13, 2007, and a final meeting was conducted on November 16, 2009, following selection of the winning bidder pursuant to the RFP process. Two separate working groups comprised of county elections officials were also established to gather input on county needs and necessary system functionality for inclusion in the RFP. The county working groups began meeting in mid-June 2007 and concluded work in August 2007. Communications with these advisory committee members and counties continue through the initial phase of development and planning. During this time, operating under the approved FSR, the Secretary of State also hired the required oversight staff – an Independent Project Oversight Consultant (IPOC); a consultant to provide Independent Verification and Validation (IV&V) of project plans and deliverables; a Project Manager; a Contract Manager, and other required personnel. That RFP to solicit bids on the VoteCal project was released on December 13, 2007. The bidding process was conducted under a "solution-based procurement" provided for in state law. Rather than prescribing a specific technological solution, the solution-based procurement allows a state agency to present the business requirements that the technology project is required to meet, and allows private sector companies to propose the specific technological solution for meeting those business requirements. The process engages potential bidders in individual, confidential discussions to assist vendors in developing a proposed bid. Under the auspices of the solution-based procurement, potential bidders notified the Secretary of State after release of the RFP by December 31, 2007, of their intent to bid on the project. Following that vendor notice of intent to bid, the Secretary of State staff, under the direction of the Department of General Services personnel, engaged in a series of confidential discussions with vendors about the project in preparation for submission of bids. During this process, in response to bidder questions and to clarify the RFP, eight addenda to the RFP were adopted. The final addendum to the RFP was adopted on December 31, 2008. Following adoption of the final addendum, a deadline for submission of bids was set for January 29, 2009. Cost opening for the bids occurred on March 26, 2009. A Notice of Intent to Award a contract was issued on April 24, 2009. A May 1, 2009, deadline for bid protests passed without a protest being received. Work on a Special Project Report (SPR) describing the project in greater detail based upon the winning bid was completed and the SPR was provided to state control agencies, including the Department of Finance and Office of the Chief Information Officer. Meetings with county representatives to describe the project, answer questions and receive input commenced on July 17, 2009, and concluded on August 28, 2009. The Legislature formally received the SPR on July 23, 2009, and approved the project on August 21, 2009. An amended Spending Plan requesting

expenditure authority for VoteCal costs for the fiscal year was received by the Legislature from the Department of Finance on August 6, 2009, and approved by the Legislature on August 25, 2009. A contract was executed with the winning bidder and work on the project commenced on September 8, 2009.

On April 19, 2010, the Secretary of State's office discovered that the vendor hired to develop and deploy the VoteCal project had not yet obtained a performance bond, which is a requirement of the contract the state executed with the vendor. On May 4, 2010, the Secretary of State sent the vendor a letter documenting, among other things, the vendor's lack of a performance bond and required the vendor to resolve the issue within 30 days." The letter offered the vendor an opportunity to meet with Secretary of State personnel to discuss the issues. During subsequent discussions with the vendor, the Secretary of State's office and the vendor mutually agreed to terminate the contract. A settlement to terminate the contract was executed on May 21, 2010.

The Secretary of State is committed to completing the VoteCal project. The state is also bound to complete the project pursuant to the terms of the MOA executed with the US DOJ on November 2, 2005. The work done to date on the project will facilitate those efforts. That work includes:

- Development of an RFP that documents in great detail the business requirements of the VoteCal project – all of the necessary functions the system must be capable of performing.
- Extensive, documented communication with stakeholders, including county elections officials, voting rights advocates, representatives of voters with disabilities and others who provide valuable input on the VoteCal business requirements.
- Experience gained with state oversight agencies, including procurement experts at the Department of General Services and technology experts at the Office of the Chief Information Officer.
- Input and advice from independent oversight contractors required by state law for technology projects, including an Independent Project Oversight Consultant and an Independent Verification and Validation consultant.
- Insight from county elections officials and vendors on the functions and operation of county election management systems, which must be integrated into the functions of VoteCal.

The Secretary of State will be moving quickly to assess lessons learned on the VoteCal project so far and determine the appropriate next steps, including renewing efforts to contract with a private vendor to develop and deploy the VoteCal system. On July 19, 2010, a Special Project Report (SPR) was submitted to state agencies that must approve the project before it can move forward to be advertised for bid in a Request for Proposal (RFP). The project will also be submitted to the Legislature for final approval following the procurement process and award of the bid to a system integrator vendor. The SPR contains a preliminary estimated deployment of the VoteCal voter registration system statewide by June 2014. However, that preliminary timeline is subject to change, and a final timeline for development, testing and statewide deployment will be determined after a vendor is selected for the project. The estimated timeline for completion of the bidding process and award of the contract to the system integrator vendor under the state's solution-based procurement process is September 2011. Additional historical information about the VoteCal project, which includes a description of the business requirements for the project, is available on-line at www.sos.ca.gov/elections/votecal/.

E. Requirements for Verification of Voter Registration Information (Section 303)

Federal Law:

(1) Section 303(a)(5), beginning January 1, 2004, or January 1, 2006, mandates specific requirements with respect to an application for voter registration for a federal election.

(a) Such application may not be accepted or processed unless it includes:

(i) the driver's license number of an applicant who has been issued a current, valid driver's license; or, if a valid driver's license has not been issued;

(ii) the last four digits of an applicant's social security number.

(b) However, if an applicant has not been issued a current, valid driver's license or a social security number, then:

(i) The State shall issue a unique identifying number.

(To the extent the State has a computerized list, this unique identifying number shall be the number assigned to the applicant for purposes of the computerized list.)

The State shall determine whether the information provided by the applicant (driver's license number or partial social security number (the last four digits)) is sufficient to meet the requirements of HAVA.

(2) The Secretary of State shall enter into a cooperative agreement with the Department of Motor Vehicles, and the Department of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security, to verify the accuracy of the information provided by the voter registration applicant, specifically:

(a) the applicant's name (first name and forename or surname);
(b) the applicant's date of birth;
(c) the applicant's social security number;
(d) whether such records show the applicant is deceased.

(Nothing shall be construed to require provision of applicable information under exceptional circumstances (e.g. personal safety or interference with an investigation).)

HAVA Compliance with Requirements for Verification of Voter Registration Information

The interim solution, approved for use by the US DOJ utilizes the upgraded, pre-existing Calvoter database to interface with the Department of Motor Vehicles (DMV) and the Social Security Administration (SSA), through a cooperative agreement with the American Association of Motor Vehicle Administrators (AAMVA) to verify identification data submitted by people registering to vote. Under this interim solution, counties are required to assign a unique identifier based upon the result of this ID verification process and in accordance with a standard formula established by the Secretary of State. The Calvoter system verifies the presence of that unique identifier when counties upload a new voter registration record to the Calvoter database.

The proposed fully HAVA compliant VoteCal system will incorporate the existing ID verification processes with DMV/SSA. However, the VoteCal system will assign the unique identifier to a voter and provide that number to the county as verification that the registration transaction has been completed and accepted for that voter.

F. Special Requirements for Certain Voters Who Register by Mail (Section 303)

Federal Law:

(1) Beginning January 1, 2004, the State shall, in a uniform and nondiscriminatory manner, require proof of residence from a registered voter for purposes of casting a ballot in a federal election, if the voter:

(a) registered to vote in a jurisdiction by mail on or after January 1, 2003,

and

(b)(i) has not previously voted in an election for federal office in the State,

or

has not voted in an election for federal office in the jurisdiction and the jurisdiction is located in a State that does not have a HAVA-compliant statewide voter registration computerized list.

(2) If the voter meets these conditions, and he or she **votes in person** (at a polling location), the voter shall, in order to vote, present to the appropriate elections official:

(a) a current and valid photo identification, **or**

(b) a copy of one of the following that shows the name and address of the voter:

(i) a current utility bill;
(ii) a bank statement;
(iii) a government check;
(iv) a government paycheck;
(v) a government document.

(3) If the voter meets these conditions, and he or she **votes by mail** (absentee ballot), the voter shall, in order to vote, submit with his or her ballot to the appropriate elections official a copy of one of the following that shows the name and address of the voter:

(a) a current and valid photo identification, **or**

(b) a copy of one of the following that shows the name and address of the voter:

(i) a current utility bill;
(ii) a bank statement;
(iii) a government check;
(iv) a government paycheck;
(v) a government document.

(4) Any voter subject to these requirements who votes in person and who does not provide proof of residence as required shall be provided a provisional ballot.

(5) Any voter subject to these requirements who votes by mail (vote-by-mail ballot) and who does not provide proof of residence as required shall have their ballot treated as a provisional ballot.

Exceptions (Section 303(b)(3)(C))

The requirements for first-time voters to provide proof of residence shall not apply when any of the following apply:

(1) The voter registers under Section 6 of the NVRA (42 U.S.C. § 1973gg—4) and submits as part of the voter registration a copy of:

(a) a current and valid photo identification, **or**;

(b) a copy of one of the following showing the name and address of the voter:

(i) a current utility bill;
(ii) a bank statement;
(iii) a government check;
(iv) a government paycheck;
(v) a government document.

(2) The voter registers under Section 6 of the NVRA (42 U.S.C. § 1973gg—4) and submits as part of the registration (subject to state verification of the information, including the applicant's name and birth date):

(a) a driver's license number, **or**

(b) at least the last four digits of their social security number.

(3) The voter is entitled to vote by vote-by-mail ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. § 1973ff—1 et seq.).

(4) The voter is entitled to vote other than in person by Section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. § 1973ee—1).

(5) The voter is entitled under federal law to vote other than in person.

HAVA Compliance with Special Requirements for Certain Voters Who Register by Mail

In conjunction with the interim solution, counties must identify first-time voters who register to vote by mail and who are also required to show identification, or provide a copy of identification when voting by mail. These voters are identified by a unique marker in the Calvoter system. The database clearly identifies those first-time voters who are required to present identification.

These provisions of HAVA are furthered through regulations enacted by the Secretary of State that define what forms of identification can be accepted by elections officials for these purposes, and via regulations that govern the use of the interim solution, the Calvoter system. Regulations for the operation of the interim solution database can be found on the Secretary of State's website at www.sos.ca.gov/elections/elections_regs.htm. Regulations that specify the allowable forms of identification to be presented by first-time voters who register by mail, under the applicable conditions, can be found on the Secretary of State's website at www.sos.ca.gov/elections/elections_regs.htm.

The functional requirements developed for the VoteCal project, as previously described, will provide for printing of polling place index from the VoteCal system, the roster of voters eligible to cast ballots at each polling place. This function of the VoteCal system will comply with HAVA's requirement that the VoteCal system constitute the official voter registration list for the state. The VoteCal system will uniformly note first-time voters who register by mail and are required to show identification when voting, so poll workers will ask for identification when necessary and appropriate.

G. Mail-in Registration Form Requirements (Section 303(b)(4))

Federal Law:

(1) The voter registration form developed under Section 6 of the NVRA (42 U.S.C. § 1973gg—4) must include:

(a) The questions:

(i) Are you a citizen of the United States of America? (and)

(ii) Will you be 18 years of age on or before election day?

(b) The statement: "If you checked "no" in response to either of these questions, do not complete this form."

(2) A statement informing the applicant that if the form is submitted by mail and the voter is registering for the first time, that additional information (a copy of documents for proof of residence; or a driver's license number or partial social security number) must be provided to avoid additional proof of residence requirements at the time of voting.

(3) If an applicant fails to answer the question: "Are you a citizen of the United States of America?" the registrar shall notify the applicant of the failure to complete the form and provide an opportunity to the applicant to complete the form in a timely manner.

HAVA Compliance with Mail-in Registration Form Requirements

Mail-in registration forms available for use in California have been modified to meet HAVA requirements by including the language required to notify registrants they must be U.S. citizens and 18 years old by Election Day to be eligible to register to vote. The form also provides for registrants to enter a California driver's license number or California ID number, if they have one of those forms of identification. If not, the registration form instructs the registrant to enter the last four digits of her or his social security number. First-time voters who register by mail are also notified that they may be required to show identification when casting a ballot.

H. Use of Requirements Payment for Other than Complying With Title III

Section 251(b) permits the use of requirements payments only for complying with Title III requirements. One exception to this allows a state to use a requirements payment to carry out other activities to improve the administration of elections. To do so, the state must certify it has implemented the requirements of Title III **or** the amount expended with respect to such other activities does not exceed an amount equal to the minimum payment amount applicable to the State under Section 252(c) (1/2 of 1 percent of the total amount appropriated for requirements payments for the year).

HAVA Compliance with Use of Requirements Payment for Other than Complying with Title III

In accordance with guidance and direction provided by the EAC, California certified to the EAC that it would establish a minimum requirements payment program on April 3, 2006. Pursuant to that certification, the Secretary of State allocated approximately $11.6 million to California counties as a part of the $195 million voting system upgrade contract. Pursuant to EAC guidance, this funding can be used in a more flexible manner than other HAVA, Title II funding.

The minimum requirements payment program established by California was intended to allow elections officials to use Title II funding for the following purposes:

- To meet storage and warehousing needs for new voting equipment;
- To buy cell phones for use by poll workers on Election Day to maintain direct contact with elections officials;
- To buy forklifts to move voting equipment that was "racked" to maintain equipment and to ensure proper electrical charging of systems;
- To retrofit voting systems with equipment necessary to produce a voter-verified paper audit trail; and
- Other purposes deemed allowable by the EAC.

Each county was permitted to use the funding allotted through the minimum requirements payment program up to its proportionate share of the $11.6 million distributed statewide among the counties.

Pursuant to subsequent guidance from the EAC, counties can also use minimum requirements payment funding to purchase hand-held personal digital assistant devices used to ensure poll workers can address issues that arise on Election Day or to refer to county-created guidance on election laws, procedures and processes, and for other purposes deemed allowable by the EAC.

Section 2

(Section 254(a)(2))

How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in element [section] number one, including a description of:

(A) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) The methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under element [section] number eight.

The requirements payments available under HAVA have been, and will continue to be, used for the purposes described in *Section 1* above, including as provided in Section 251(b)(2), or as otherwise authorized by HAVA.

HAVA funds distributed pursuant to this State Plan are to be used for meeting Title III requirements for federal elections. California's 58 counties conduct federal elections. Therefore, it was determined by then-Secretary of State Kevin Shelley in 2003 that only California counties are eligible to receive these funds. Cities conducting stand-alone, municipal elections are not eligible for HAVA funding. Other criteria are used to determine funding eligibility. For instance, counties may use federal funding only to purchase those voting systems approved by the Secretary of State to meet the applicable requirements of state and federal law.

The Secretary of State's office, in consultation with county elections officials, determined in 2004 the appropriate allocation of HAVA funds for Title III requirements. That process resulted in an allocation of $195 million (76% of the Title III funds received to date by the state) to voting system upgrades and related costs, such as poll worker training and voter education, where appropriate and allowable. The Secretary of State's office subsequently began executing contracts with each of the 58 counties beginning on December 17, 2005 to distribute the HAVA requirements payment funds to counties. These standard agreements provide the counties with details on the allowable use of funds and rules governing the use of funds. The reimbursement-based contracts require counties to submit claims with supporting documentation to be eligible to receive reimbursement. By executing contracts with counties, the State is able to monitor both the distribution and the use of funds.

Subsequent to the execution of those contracts, the EAC has provided additional guidance to states on the allowable uses of HAVA funding, including the use of funding for voter education and pollworker training, which is posted on the EAC website at www.eac.gov/election/advisories%20and%20guidance (e.g., FAO 08-011 for guidance on voter education and poll worker training). The guidance specified that using Section 251 funds, which are earmarked in HAVA for meeting Title III requirements, could not be used for voting education and poll worker training except in limited circumstances – when a new voting system was introduced to voters by counties or to conduct a voter education program to minimize overvoting when a paper-based, centrally tabulated voting system was being used. That guidance could be reconsidered by the EAC. The Secretary of State will continue to monitor EAC guidance to ensure that its HAVA program is structured accordingly.

In an effort to maximize the flexibility for counties in use of these funds, then-Secretary of State Bruce McPherson certified to the EAC on April 3, 2006, that a minimum requirements payment program would be established pursuant to HAVA Section 251 (b). The proportionate share of approximately $11.6 million in minimum requirements payment funding available under HAVA Section 251 (b) was provided to each county using the formula developed for allocation of California's Voting Modernization Bond Act of 2002 (Proposition 41). These funds were made available to counties for allowable purposes specified by the EAC, including meeting storage needs for new voting equipment, subject to EAC pre-approval.

Counties have expended approximately $124.8 million for voting system upgrades and other related allowable uses, including $8.9 million in minimum requirements payment funding. Uses of minimum requirements payment funding by counties included:

- Meeting storage and warehousing needs for new voting equipment – $5.5 million
- Retrofitting DRE voting equipment with voter-verified, paper-audit-trail printers – $138,000
- Educating voters and training poll workers – $8.6 million

The expenditure of HAVA funds for voter education and poll worker training included the following activities:

- Updating poll worker training manuals (34 counties)
- Employing new training techniques (26 counties)
- New poll worker recruitment efforts (12 counties)
- New poll worker feedback and monitoring efforts (5 counties)
- Newspaper advertising to educate voters on new HAVA requirements (26 counties)
- Expanding sample ballots to educate voters to new HAVA requirements (10 counties)
- Creating brochures, videos and audio cassettes, in multiple languages (13 counties)
- Website enhancements (9 counties)
- Participating in community events (10 counties)

This list of HAVA activities undertaken by California counties is not exhaustive. The list does not include voter education and poll worker training efforts undertaken using county resources. This list only includes those activities for which counties sought HAVA reimbursement under HAVA contracts and the minimum requirements payment program included in those contracts.

In poll worker training plans submitted by counties at the request of the Secretary of State, many counties noted that new training techniques would include hands-on voting system training, role-playing and added components to ensure poll workers could meet the needs of voters with disabilities and those with alternative language needs. Some of these efforts were bolstered by a separate grant program provided for under HAVA Section 261 aimed at improving polling place accessibility for voters with disabilities. Guidelines on poll worker training developed under state law (Elections Code section 12309.5) provided the counties with standards for the uniform training of precinct inspectors and first-time poll workers, who under Elections Code section 12309 and section 19340, respectively, are required to be trained by county elections officials. Those guidelines, pursuant to state law, include guidelines for instruction of poll workers on:

- The rights of voters, including rights to language access provided for under the Voting Rights Act, and access for voters with disabilities
- Cultural competency – commonly understood as the ability to recognize and to respond to cultural concerns or sensitivities of groups
- Knowledge of issues confronting voters with disabilities, including barriers to access and the potential need for reasonable accommodations to exercise the right to vote

In 2010, the Secretary of State updated the standards to expand on the 2006 guidelines, and address issues that arose subsequent to issuing the 2006 standards.

State law only requires that precinct inspectors, who have responsibility for supervising polling place activities, and first-time poll workers, be trained prior to each election. Although counties make training available for all poll workers, returning poll workers are not required by law to undergo training. The law attempts to recognize experienced poll workers may not need training and that if all poll workers had to be trained by law, recruiting people for largely volunteer positions would likely become more difficult. The increasing popularity of vote-by-mail balloting as a means of casting a ballot may become an impetus for revising state law to adjust the number of voters a polling place must accommodate, which would reduce the overall need for pollworkers.

Additionally, the Secretary of State conducted Election Day and Poll Worker Training observation programs during the 2006 and 2008 election cycles. These programs, which utilized Secretary of State employees as observers, provided for onsite visits to county poll worker training sessions and polling places selected to reflect a wide cross-section of demographics and to maximize the number of sites that could be visited. Observers received training at the Secretary of State's office, including training on the use of voting systems and other HAVA-required activities. Observers also attended poll worker training classes conducted by local elections officials in the county where they were assigned to be observers. Lessons learned from each of the observation programs built successively on later programs. Issues identified by observers and innovative practices employed by counties, such as hands-on training on voting systems, role-playing and interactive training sessions were communicated to counties, which contributed to changes that were noted by observers in subsequent county programs. In addition to these direct communications with counties observed and in identifying the posting of observation reports, the Secretary of State has created a Practices of Elections Officials page on its website to foster expansion of innovative programs. The full reports of the programs for the 2006 and 2008 election cycles are available on the Secretary of State's website at www.sos.ca.gov/elections/elections_vs.htm The Secretary of State's Practices of Elections is available on the Secretary of State's website at www.sos.ca.gov/elections/best-practices.htm

These combined efforts – the use of standard agreements developed in collaboration with county election officials, ongoing guidance and monitoring of expenditures, requests for reports, as required, and the Election Day observation program, as resources permit – will continue to serve as tools used by the Secretary of State to oversee and monitor HAVA implementation at the local level.

Section 3

(Section 254(a)(3))

How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

Leading up to the November 2004 General Election, the Secretary of State earmarked $9.9 million in HAVA Section 101 funding to counties for poll worker training and voter education grants. Contracts were executed with counties that applied for the funding, which was allocated based on the grant requests submitted by counties. Counties used these funds to prepare for implementation of HAVA requirements through voter education and outreach programs that included meetings with community groups, county-sponsored efforts and mass media advertising.

The Secretary of State subsequently provided additional HAVA funding for poll worker training and voter education through contracts valued at a total of $195 million. The contracts allowed counties to determine what level of funding was necessary to complement the deployment of HAVA-compliant voting systems. Counties were required by the contract to file voter education and poll worker training plans. The money was to be used to improve voters' understanding of new HAVA requirements, with an emphasis on instructions on how to cast a ballot using new voting equipment. Poll worker training funding was to be used to ensure HAVA requirements were met (e.g. instructions on set up and operation of new voting systems, provisional voting rights, etc.). Through the 2006 and 2008 election cycles, counties spent $8.6 million for voter education and poll worker training efforts.

Many county poll worker training plans noted that new training techniques would include hands-on voting system training, role-playing and other components to meet the needs of voters with disabilities and those with alternative language needs. Some of these efforts were bolstered by a separate grant program provided for under HAVA Section 261 aimed at improving polling place accessibility for voters with disabilities.

As previously mentioned, pursuant to state law (Elections Code section 12309.5), a task force was created to recommend uniform statewide guidelines for the local training of poll workers. Under Elections Code sections 12309 and 19340, precinct inspectors and first-time poll workers are required to be trained by county elections officials. The guidelines encourage poll workers to be instructed on:

- The rights of voters, including rights to language access and access for voters with disabilities, and rights of protected classes of voters referenced and defined under the federal Voting Rights Act
- Cultural competency – commonly understood as the ability to recognize and to respond to cultural concerns or sensitivities of groups
- Knowledge of issues confronting voters with disabilities, including barriers to access and the potential need for reasonable accommodations to exercise the franchise

By including guidance on meeting the needs of voters with disabilities, language accessibility and cultural competency, the guidelines highlight the importance of recognizing California's diverse electorate. According to U.S. Census Bureau data, California is home to more than 4 million people with disabilities, and more than 12 million Californians speak a primary language other than English at home. More than 8 million speak Spanish, and more than 2.7 million speak an Asian or Pacific Islander language. As a result of this language diversity, the entire state of California is a covered jurisdiction for Spanish and California's most populous counties serve multiple languages under Section 203 of the federal Voting Rights Act. Los Angeles, for instance, is required to provide voting materials in seven languages – English, Chinese, Japanese, Korean, Spanish, Tagalog/Filipino, and Vietnamese.

The guidelines, which were issued in 2006, were updated in 2010. The most current standards can be found on the Secretary of State's website at www.sos.ca.gov/elections/pollworker.htm. Although no HAVA funding was used to develop these guidelines and the updated standards, they provide local elections officials with information on applicable state and federal laws, including HAVA.

The Secretary of State also issued a HAVA compliance manual on August 25, 2006, that includes guidance on voter education and poll worker training. The HAVA compliance manual can be found on the Secretary of State's website at www.sos.ca.gov/elections/hava_compliance_manual.htm.

Along with this statewide guidance, the Secretary of State has used Section 101 funding to augment county elections officials' efforts. The Secretary of State has produced printed materials that include important new information about the electoral process, including:

- New voter registration requirements (providing a driver's license number or partial social security number)
- Instructions on casting a ballot (by reference to county-specific information)
- Information about voting rights
- Information to assist voters with disabilities in accessing information, polling place accessibility, and voting rights
- Information about casting a provisional ballot
- Audio cassettes of printed voter information
- A sign language version of voter information that was posted on the Secretary of State's website
- Press releases issued in consultation and coordination with local elections officials as needs arise

Many of these printed materials have been included in mailings to a database of more than 5,000 community-based organizations, and have also been made available at community events attended by the Secretary of State and Secretary of State staff. Additional materials were, and continue to be, mailed to community-based groups upon request. These materials are also available on the Secretary of State's website at www.sos.ca.gov/elections/elections.htm

The Secretary of State formed partnerships with state and local government agencies, and with private organizations to help distribute materials. Those groups included: Independent Living Centers (which represent voters with disabilities), the League of Women Voters of California (supporting the Smart Voter webpage and production and distribution of the Easy Voter Guide, a plain English version of the statewide Voter Information Guide translated into multiple languages and available online), the League of California Cities, the California State Association of Counties, the California Department of Education, local school districts, the State Controller's Office, professional trade associations and others. The Secretary of State has also undertaken efforts to expand its use of technology to reach voters by providing electronic "logos" to public, private and non-profit entities that link back to the Secretary of State's web pages that provide voter information. The Secretary of State has also utilized social networking tools such as Facebook and Twitter to engage voters in the electoral process and to provide timely updates of voter information, such as reminders about the voter registration deadline, and vote-by-mail ballot request and return deadlines. Many of the activities were not supported with HAVA funds, but some staff time and printing and distribution costs for printed materials were partially supported with HAVA Section 101 funds.

In California's initial State Plan, published on July 17, 2003, the Secretary of State proposed to "consider developing voter information in appropriate languages for posting at polling places" and to work to "ensure that all information provided at polling places be accessible to the widest possible audience." The Secretary of State developed voter information for posting at polling places pursuant to California Elections Code section 2300. The Voter Bill of Rights poster outlined in Elections Code section 2300 is provided to counties at their request and production of the Voter Bill of Rights poster is partially funded by HAVA section 101 funds. This posting supplements information provided in sample ballots, which are mailed to registered voters and available at polling places for voters who do not receive one or any voter who wishes to view one at the polling place. Additionally, the Secretary of State has made statewide electoral information in the Voter Information Guide (VIG) available in alternative formats such as audiotapes, which are available on request; audio MP3 files and other materials available on its website; and produced in American Sign Language and posted on the Secretary of State website a video version of the statewide "Your Voting Rights" brochure.

To address elections official training needs, the professional umbrella organization for county elections officials, the California Association of Clerks and Elections Officials (CACEO), contracted with a private consulting firm for a full review HAVA requirements and the implications of those requirements for administration of elections in California. In addition, the CACEO created training classes for its members. While the training courses are not exclusively about HAVA, the Act is mentioned as a specific topic to be covered and the related subject matter (e.g. poll worker training and recruitment, voter registration, testing new voting equipment) necessarily includes a thorough discussion of HAVA requirements. At the conclusion of the program's 10 courses, a California Professional Election Administrator Credential is conferred on participants. All of these CACEO efforts were funded using association dues, and no HAVA Title II resources were allocated to this effort.

California's initial State Plan and 2004 update contemplated the creation of an Election Academy to train prospective election officials. A significant amount of funding – $25 million – was earmarked for this purpose, but there is no indication that any curriculum or program design work was initiated. No outline of such a program exists at the Secretary of State's office. For all intents and purposes, the CACEO efforts to credential its membership have filled this void.

Despite the decision by prior Secretaries of State not to initiate an "Election Academy," the office has undertaken numerous, meaningful steps to ensure that California's county elections officials are fully informed of HAVA requirements and programs, and those efforts continue today. Those efforts include:

- Creating, in collaboration with election officials, a HAVA Compliance Manual, which can be found on the Secretary of State's website at www.sos.ca.gov/elections/havea_compliance.htm
- Drafting and executing standard contracts, in consultation and collaboration with counties, that specify the level and appropriate use of HAVA funding
- Providing ongoing written guidance to all counties on a regular basis regarding HAVA requirements, including associated requirements for meeting federal guidelines for receipt of federal funds
- Conducting monthly conference calls with all county elections officials
- Secretary of State staff attendance at monthly CACEO meetings and subcommittee meetings, and attendance at biannual CACEO conferences
- Serving as a resource for individual county questions and concerns on a daily basis
- Working with the CACEO to provide financial support using HAVA Section 101 funding for CalPEAC elections officials training classes, which address HAVA implementation

California has relied upon Title I, Section 101 funding to provide this ongoing guidance. It is not anticipated that any Section 251, Title III requirements payment funding will be used for these efforts.

Subsequent to these efforts, the EAC issued additional guidance to states on the allowable use of HAVA funds for voter education and poll worker training (see the EAC website at www.eac.gov/election/advisories%20and%20guidance, FAO-080-011).

The Secretary of State will continue to work with CACEO, and respond to voter education and poll worker training needs. Through this work and continued interaction with individual counties, the Secretary of State will seek to complement local efforts.

The Secretary of State will continue to produce voter education materials, which include information on HAVA-specific requirements, for distribution to its list of community-based organizations, which the Secretary of State will continue to refine. The Secretary of State will also seek to expand its partnerships with voter rights advocacy groups and other private sector organizations.

Section 4

(Section 254(a)(4))

How the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

State law requires the Secretary of State to approve voting systems and equipment, as well as the procedures for the use of those voting systems before a system can be used in any election. The Secretary of State also has the authority to withdraw approval of voting systems and equipment.

Through 2005 and 2006, California significantly modified the testing and approval process used to examine voting systems to ensure to the fullest extent possible that voting systems met the prevailing standards. Until December 13, 2005, the EAC had not yet promulgated the Voluntary Voting System Guidelines (VVSG) pursuant to HAVA Subtitle B of Title III (Section 311 (b)(1)). Even after the adoption of the VVSG, the Guidelines did not take effect until December 13, 2007. Therefore, the prevailing standard used by California leading up to the 2006 election cycle was the Federal Election Commission (FEC) 2002 standards for voting systems. Additionally, under state Elections Code section 19250 (a), all direct recording electronic voting systems (DRE) submitted to the Secretary of State after January 1, 2005, were required first to receive federal qualification. Throughout 2006, federal qualification was attained through a process conducted under the auspices of the National Association of Election Directors (NASED). The EAC, pursuant to HAVA requirements, launched its full voting system testing and approval program in January 2007.

For the voting systems proposed for use in the 2006 election cycle, the Secretary of State's office required confirmation of the federal qualification of the voting system to ensure the voting system met the prevailing FEC 2002 standards. Testing of the voting system was conducted to ensure the system met the requirements of state law. The state also examined the system to ensure the HAVA-required voting system features were present and functional (e.g. the ability to detect an error in the ballot before it is cast). Only after a system met these requirements was it eligible for state consideration for approval. The state also instituted some innovative testing protocols, in particular volume testing, in an attempt to determine if the voting system would perform adequately under simulated Election Day conditions.

Throughout the nation, however, concerns about the operation and security of voting systems persisted and the adequacy of the voting system testing and approval process was called into question.

On January 6, 2007, Secretary of State Debra Bowen assumed office. Under the authority provided to her by state law, she undertook a top-to-bottom review of voting systems approved for use in California. A total of $512,425 in HAVA Title I, Section 101 funds earmarked by the State Legislature for this purpose was used in conjunction with nearly $400,000 of required funding from voting system vendors to defray the costs

of the review. The top-to-bottom review was the first of its kind in the nation, consisting of a comprehensive review of voting equipment source code that included both a review of source code and penetration security testing to determine whether perceived vulnerabilities in the source code could be exploited or manipulated to adversely affect the secure operation of the voting system. Voting systems were also subjected to a full review of accessibility for voters with disabilities during the top-to-bottom review using the applicable provisions of the 2005 VVSG as a benchmark.

Prior to conducting the top-to-bottom review, voting system vendors were provided the opportunity to submit a voting system for review, or to forgo the review provided the vendor planned to submit a new, upgraded voting system in time for the system to be tested and approved under an updated testing and approval regime modeled on the procedures and protocols used in the top-to-bottom review.

On August 3, 2007, the Secretary of State released the results of the top-to-bottom review and issued withdrawal of approval and approval orders based upon the findings of the top-to-bottom review for voting systems manufactured by three vendors – Sequoia, Premier (formerly Diebold) and Hart Intercivic.

The August 3, 2007, approval orders are detailed and complex and were subsequently amended. Final approval orders were issued in October 26, 2007. Among the many provisions, the orders for the Sequoia and Premier voting systems restrict the use of DRE voting equipment to one DRE voting unit per polling place, which is consistent with HAVA's Section 301 (a)(3)(B) requirement to meet the needs of voters with disabilities. Hart Intercivic voting units were not restricted to one DRE per polling place. All DRE and optical scan voting systems are now subject to modified use procedures to improve security, consistent with the findings from the top-to-bottom review. Information about the top-to-bottom review, including findings, and withdrawal of approval and approval orders can be found on the Secretary of State's website at www.sos.ca.gov/elections/elections_vsr.htm

The Secretary of State will continue to review voting systems to ensure that they comply with the requirements of Section 301 and other provisions of HAVA. The processes used to test and review the systems will include volume testing, procedures and protocols adopted as part of the top-to-bottom review in 2007, and consideration of any voluntary guidelines adopted by the Commission pursuant to Subtitle B of Title III.

Section 5

(Section 254(a)(5))

How the State will establish a fund described in Section (b) for purposes of administering the State's activities under this part, including information on fund management.

(1) The Secretary of State has established three Special Deposit Fund subfunds within its Federal Trust Fund. Each subfund within the Special Deposit Trust Fund serves as the repository for actual cash disbursements by the federal government for the Title I-Section 101, Title I-Section 102 and Title II funds.

(2) The Secretary of State's fiscal, accounting, and budgeting offices will have overall responsibility, under the direction of the Secretary of State, for administration of these funds.

(3) The administration of the fund will meet all requirements of federal and state law for fiscal management.

Section 6

(Section 254(a)(6))

The State's proposed budget for activities under this Part (Part 1 of Subtitle D of Title II), based on the State's best estimate of the costs of such activities and the amount of funds to be made available, including specific information on:

(A) The costs of the activities required to be carried out to meet the requirements of Title III;

(B) The portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) The portion of the requirements payment, which will be used to carry out other activities.

A great deal has changed since California's last State Plan update was published by the EAC in the Federal Register on September 30, 2004. In addition to four changes of administration at the California Secretary of State's office since the 2002 adoption of HAVA, 11 statewide elections were conducted between 2002 and 2008. The Secretary of State's office was subject to multiple audits. The office also engaged in detailed discussions with the United States Department of Justice (US DOJ) regarding compliance with HAVA Section 303 requirement to have a statewide voter registration database that culminated in execution of a Memorandum of Agreement (MOA) on November 2, 2005. The nation also witnessed a continuing debate over voting system policy, design and deployment. States such as New Mexico and Florida were among the first to react to voting system challenges that arose after the enactment of HAVA by moving to largely paper-based voting systems. California conducted a top-to-bottom review of the voting systems used in the state and has followed a similar course. After California's top-to-bottom review was concluded, Colorado and Ohio independently conducted voting system reviews and reached findings similar to those made in California.

Notwithstanding these challenges, HAVA compliance deadlines did not change. During the 2006 election cycle, California complied with the terms of the November 2, 2005, MOA by meeting the requirements for interim compliance with HAVA Section 303 statewide voter registration database requirements. Before the close of 2007, California issued a Request for Proposal (RFP) that served as the basis for contracting with a vendor to design and implement a statewide voter registration system that is fully compliant with HAVA requirements, as required by the MOA. As previously indicated, a vendor was selected through a competitive bidding process to complete the VoteCal project. However, on April 19, 2010, the Secretary of State's office discovered that the vendor hired to develop and deploy the VoteCal project had not obtained a performance bond, which is a requirement of the contract the state executed with the vendor. On May 4, 2010, the Secretary of State sent the vendor a letter documenting, among other things, the vendor's lack of a performance bond, and required the vendor to resolve the issue within 30 days. The letter offered the vendor an opportunity to meet with Secretary of State personnel to discuss the issues. During subsequent discussions with the vendor, the Secretary of State's office and the vendor mutually agreed to terminate the contract executed with the vendor. A settlement to terminate the contract was exceuted on May 21, 2010.

The Secretary of State is committed to completing the VoteCal project. The state is also bound to complete the project pursuant to the terms of the MOA executed with the US DOJ on November 2, 2005. The work done to date on the project will facilitate those efforts. That work includes:

- Development of an RFP that documents in great detail the business requirements of the VoteCal project – all of the necessary functions the system must be capable of performing.
- Extensive, documented communication with stakeholders, including county elections officials, voting rights advocates, representatives of voters with disabilities and others who provide valuable input on the VoteCal business requirements.
- Experience gained with state oversight agencies, including procurement experts at the Department of General Services and technology experts at the Office of the Chief Information Officer.
- Input and advice from independent oversight contractors required by state law for technology projects, including an Independent Project Oversight Consultant and an Independent Verification and Validation consultant.
- Insight from county elections officials and vendors on the functions and operation of county election management systems, which must be integrated into the functions of VoteCal.

The Secretary of State will be moving quickly to assess lessons learned on the VoteCal project so far and determine the appropriate next steps, including renewing efforts to contract with a private vendor to develop and deploy the VoteCal system. On July 19, 2010, a Special Project Report (SPR) was submitted to state agencies that must approve the project before it can move forward to be advertised for bid in a Request for Proposal (RFP). The project will also be submitted to the Legislature for final approval following the procurement process and award of the bid to a system integrator vendor. The SPR contains a preliminary estimated deployment of the VoteCal voter registration system statewide by June 2014. However, that preliminary timeline is subject to change, and a final timeline for development, testing and statewide deployment will be determined after a vendor is selected for the project. The estimated timeline for completion of the bidding process and award of the contract to the system integrator vendor under the state's solution-based procurement process is September 2011. Additional historical information about the VoteCal project, which includes a description of the business requirements for the project, is available on-line at www.sos.ca.gov/elections/votecal/.

During the 2006 election cycle, all counties in California also deployed voting systems intended to comply with HAVA Section 301 voting system requirements. Voter education and poll worker training programs were also initiated at the state and county levels leading up to and during implementation of HAVA requirements in the 2006 and 2008 election cycles.

The budget included in the original State Plan and the 2004 update included the following caveat:

> "Budgetary issues cannot be resolved until the...costs of actual implementation are ascertained."

Now, with the actual experience of HAVA implementation and understanding the challenges that still lay ahead, the budgetary issues have become clearer, but will be subject to similar dynamics. The EAC's Voluntary Voting System Guidelines (VVSG), adopted in 2005, are currently undergoing refinement. Thereafter, the EAC intends to promulgate a new set of VVSG. Congressional action on HAVA policy may still be forthcoming. In addition, California still needs to establish its statewide voter registration database as required by the MOA executed with the US DOJ. With that in mind, California's proposed HAVA budget is set forth below:

(1) Proposed Budget

(a) The Secretary of State, as the Chief Elections Officer of California as described in HAVA Section 253(e), in accordance with U.S. Election Assistance Commission (EAC) guidance, will continue to adopt policies and procedures to ensure that all funds received, including interest earned on those funds will be used to accomplish the requirements of Title III, with the exception of funds identified in Sections 251(b)(2)(A) and (B) from Title II allocations.

(b) The Secretary of State will identify its "maintenance of effort" level, pursuant to EAC guidance, and will not use HAVA funds to supplant activities already funded, as this activity is precluded by maintenance of effort provisions found in Section 254 (a)(7).

(c) California's voters authorized $200 million in general obligation bonds in 2002 to finance the modernization of voting equipment. Counties can use these funds for the purchase and deployment of voting equipment. The appropriate portion of these funds will be accounted for to satisfy the matching fund requirement of Section 253(b)(5).

(d) No funds received pursuant to Title II will be used for purposes of litigation or payment of judgment, as this is precluded by Section 251(f).

(e) The Secretary of State, as the Chief Elections Officer of California as defined in Section 253(e), will administer the Election Fund described in Section 254(b) of the Act.

(2) Specific Budget Components Relative to Title III

The Secretary of State, in administering the Election Fund, will provide funding for the following specific requirements of Title III:

(a) Voting Systems Standards

In consultation with county elections officials, and taking into account funding provided via the California "Voting Modernization Bond Act of 2002" (described under (c) above), it was determined under a prior administration that $195 million of the $264.2 million provided to the state by HAVA was an appropriate level of funding to assist counties with deploying HAVA-compliant voting systems by the January 1, 2006, deadline. The allocation formula used to disburse the $195 million was the same formula used to distribute Voting Modernization Bond Act funds. The formula gives equal weight to a county's proportionate statewide share of four factors:

- The county's number of registered voters (as of the February 19, 2002 Report of Registration)
- The county's average voter turnout over four election cycles (beginning in November 1998)
- The number of polling places in the county (for the March 2002 Primary Election)
- The number of people eligible to register to vote (as of the February 19, 2002 Report of Registration)

More detail about the allocation formula can be found on the Secretary of State's website at http://www.sos.ca.gov/elections/vma/vmb_formula_allocation_docs.html

The 2004 State Plan update budgeted $75,677,843 to meet Section 301 voting system standards through county procurement and deployment of HAVA-compliant voting system equipment. The 2004 State Plan update also budgeted a cumulative total of $45 million for voter education, and $800,000 for provisional voting requirements. Additionally, the 2004 State Plan update budgeted $25 million for an "Election Academy" to train election officials and provide poll worker education. The cumulative total of the 2004 State Plan update budget for these items is $146,477,843. The amount budgeted for these purposes under this 2009 State Plan update is $195 million, a difference of $48,522,157. However, the 2004 State Plan update also anticipated a reserve of more than $66 million.

On May 20, 2005, then-Secretary of State Bruce McPherson provided a cross-reference and reconciliation of the 2004 State Plan update budgeted items with a spending plan submitted to the State Legislature. It detailed expenditures, including $195 million earmarked for voting system upgrades and associated voter education and poll worker training costs by using of a portion of the proposed $66 million reserve budgeted in the State Plan update for that purpose. The cross-reference and reconciliation provided at the request of the EAC noted a differential of approximately 3.5% between the State Plan update budget and the spending plan pending before the Legislature. After receiving that

cross-reference and reconciliation, the EAC approved the release of $169,677,955 in HAVA funds to California.

As noted above, earlier State Plans separately earmarked up to $70 million in HAVA Title II funding for voter education and poll worker training. Recognizing that local efforts aimed at voter education and poll worker training needed to work in concert with the deployment of new voting equipment, funding for these activities was included in the $195 million voting system upgrade contract executed with the state's 58 counties. Through the 2006 and 2008 election cycles, counties used approximately $8 million in HAVA funding from this source for these purposes.

(b) Provisional Voting

Before HAVA's enactment, California law already specified procedures for provisional voting that generally comply with the requirements of Section 302. Provisional balloting is also accessible to voters with disabilities because in order to obtain state approval, every voting system must include an accessible device that includes a provisional voting capability. In response to new HAVA requirements, the Secretary of State, in cooperation with local elections officials, defined a free access system (or systems) to permit voters to determine if their provisional ballot was counted and if it was not, why not. Each county has deployed a free access system in accordance with HAVA requirements. The Secretary of State conducts an annual survey of counties to ensure the free access system is available to provisional voters and to determine what specific method is used to meet the free access requirements. This information is provided to voters on the Secretary of State's website at http://www.sos.ca.gov/elections/elections_provisional.htm

As mentioned in previous State Plans, the state is still considering taking a proactive approach to advising provisional voters of the status of their ballot and, if it was not counted, why it was not counted through the design of its VoteCal statewide voter registration system.

No HAVA Section 251, Title II funds were spent to date complying with the requirements described above.

(c) Voting Information

HAVA requires that certain information be provided to voters at the polling place. This information includes a sample ballot, the date and hours of voting, how to vote, how to vote a provisional ballot, procedures for first-time registrants required to provide identification in order to vote, a listing of the rights of voters, and general information on other laws and protections for voters. Before HAVA's enactment, much of this information was provided to voters pursuant to state law. However, posting the information at polling places was viewed as a minimum standard, as HAVA Section 305 states, because providing this information to voters before Election Day best ensures that voters understand the electoral process to enable them to fully exercise their rights. Therefore, counties were encouraged to pursue voter education programs that provided this information in printed materials distributed at outreach events and via websites leading up to elections as an adjunct to deployment of a new voting system. The incremental cost of revising materials or websites and conducting outreach programs were included as allowable costs via the $195 million voting system upgrade contract described above.

EAC guidance received on September 26, 2008, at the request of the Secretary of State's office has clarified the use of these funds for voter education efforts. The guidance points out that the specific requirements of HAVA Section 302 are for posting information at polling places and further advises that there are limits on the use of funding beyond posting information at polling places. Funding is only allowable for voter education programs aimed at informing voters about the consequences of overvoting and how to prevent overvoting when voters use a paper-based, centrally tabulated voting system, or when educating voters on the use of a new voting system at the time that the voting system is first deployed.

To ensure adequate posting of voter information required by HAVA, the state has produced and distributed, pursuant to California Elections Code section 14105(q), a Voter Bill of Rights for posting at polling places. The Voter Bill of Rights is printed and distributed using an equal amount of HAVA Section 101 funds and state funds.

No further Section 251, Title III requirements payment funding, beyond that described above, will be budgeted for this activity.

(d) Statewide Voter Registration List

Pursuant to HAVA Section 303, the Secretary of State is required to develop a single, uniform, official, centralized, and interactive list of registered voters that is defined, maintained, and administered at the state level. This computerized list shall be the official list of voters for federal elections.

From a budgetary standpoint, the cost of meeting this requirement was largely unknown in 2004, when the prior Secretary of State drafted the initial State Plan. Also, historical documentation available to subsequent administrations suggests that many of the costs associated with procurement of a major technology project was not recognized when the initial State Plan was drafted, nor were they anticipated in the State Plan update. Subsequent to the drafting of those State Plans, California took two courses of action that fully informed the State of the costs involved.

On January 11, 2005, the Secretary of State's office requested an opinion from the US DOJ about its plans to comply with HAVA Section 303 statewide voter registration database requirements on an interim basis. The initial discussions with the US DOJ about those plans concluded on April 19, 2005. On May 25, 2005, the US DOJ informed the Secretary of State that its plans did not represent compliance, and that US DOJ was

"prepared to move forward with enforcement action under HAVA as appropriate to ensure compliance…"

Thereafter, the Secretary of State engaged in discussions with the US DOJ about what procedural changes to the voter registration process could be enacted via regulations and what technological upgrades could be made to an existing system to integrate and synchronize 58 county election management systems (EMS's) into a single, statewide voter registration system. The discussions with US DOJ culminated in a Memorandum of Agreement (MOA) executed between the Secretary of State and US DOJ on November 2, 2005. The MOA outlined the regulations that were to be enacted, and the technological improvements to the state and county voter registration systems to achieve interim compliance. The state met the requirements of the MOA and is operating the system outlined in the MOA using Title I, Section 101 funds. However, the MOA also committed the Secretary of State to continuing to pursue long-term compliance with the HAVA mandate of building a statewide voter registration list. Long-term compliance with HAVA Section 303 will be achieved with development and implementation of the VoteCal project.

The Secretary of State took work initially done to evaluate a long-term HAVA Section 303 compliance strategy compiled by a previous administration and drafted a comprehensive Feasibility Study Report (FSR). An FSR, required under state law and procedures, serves as a roadmap to development and implementation of major technology projects. The FSR, which was approved by technology and budget oversight authorities, is required to include an estimate of all costs associated with development, procurement and implementation of major technology projects. The full accounting of costs in that FSR differed significantly from the estimated $8 million to $40 million cost of compliance in the initial State Plan, and the estimated $40 million in the 2004 State Plan update. That initial 2004 cost estimate only included the cost of system integration; it did not account for other necessary costs required to be included to obtain state approval to develop and implement a major technology project. Those cost estimates must include project management, project oversight, independent validation and verification, and one year of system operation and maintenance in order for the project to be approved. These costs, and others, were not included in the cost projection provided in the initial State Plan and State Plan update.

Through its procurement experience, the Secretary of State, accounting for all costs associated with procurement, development and implementation, including a year of maintenance and operation, estimated more accurately the cost to complete the VoteCal project at $65.6 million. Although that estimated cost could change based upon a new procurement process and a new proposed solution, this is the best estimate for the project at this time. This change in the estimated costs in the State Plan budget, which is driven in large part by the MOA executed with the US DOJ, the enforcement authority for HAVA, represents the largest material change in this 2009 State Plan update.

(e) Requirements for Voters Who Register by Mail

The Secretary of State developed guidance and regulatory procedures for the uniform implementation of the requirements of Section 303(b) via guidance and regulation, including:

- A HAVA Compliance Manual, with relevant guidance found principally in Chapters 1 and 7 of the Compliance Manual, on the Secretary of State's website at www.sos.ca.gov/elections/hava_compliance_manual.htm;
- Regulations adopted that govern operation of the interim solution statewide voter registration database, which can be found on the Secretary of State's website at www.sos.ca.gov/elections/elections_regs.htm; and
- Associated regulations that govern the application of voter identification requirements for first time voters who register by mail at www.sos.ca.gov/elections/elections_regs.htm.

The costs for developing the HAVA Compliance Manual, implementing regulations and implementing the interim solution statewide voter registration database were funded using existing resources and HAVA Section 101 funds. No additional HAVA Section 251 funding will be expended on this requirement beyond the funding for the VoteCal project.

(3) The Portion of the Requirements Payment, which will be used to carry out Other Activities.

Minimum Requirements Payment Program (Title II, Section 251(a)(2)(B) – On April 3, 2006, pursuant to EAC guidance, California filed a certification to create a minimum requirements payment program pursuant to HAVA Section 251 (a)(2)(B). The minimum requirements payment program provides states with the ability to allocate up to $11,596,803 for purposes that improve the administration of elections that are not otherwise required by Title III of HAVA. California provided the allocation to counties via the $195 million voting system upgrade contract by applying the Voting Modernization Bond allocation formula to the $11,596,803 allowed pursuant to Section 251 (a)(2)(B) and allocating to each county its proportionate share of funding as a part of the county's voting system upgrade contracts. Counties were allowed to expend that proportionate share of the minimum requirements payment on storage and warehousing needs for new voting equipment, for forklifts to move voting units at warehouse or storage facilities and for cell phones to maintain direct communication with polling places on Election Day. The funds are also allowable for use as specified by guidance from the EAC. The funding is restricted to ensure that only that portion of spending that directly benefits federal elections is allowable.

Thus far, pursuant to EAC guidance and with EAC pre-approval when necessary, counties have expended $9.5 million in minimum requirements payment funding, leaving a balance of approximately $2.1 million. These expenditures represent about 3.6 percent of California's existing Title III allocation.

New HAVA Funding

Aceording to the EAC, California is entitled to receive $31,991,504 in new Title II funding. In addition, California has earned $35,459,287 in interest on Title II funding on deposit in its State Eleetion Fund.

(4) Summary of Costs and Portions used to carry out Activities

Note that the budget below ineludes the total of all HAVA funds the Secretary of State anticipates receiving, including interest earned on funds reeeived to date and funds antieipated following the submission and publieation of this 2009 State Plan. As sueh, this budget reeoneiles, and replaees, earlier budget estimates ineluded in the initial 2004 State Plan (published in the Federal Register on Mareh 24, 2004), and the 2004 State Plan update (published in the Federal Register on Septcmber 30, 2004) previously submittcd by California.

As those earlier State Plans stated, "the eosts and portions indieated [in those State Plans] [were] subject to ehange based on the variables indicated [in those State Plans]. Such antieipated ehanges, unknown at this time, are deemed to be included in this Plan as if set forth in dctail. Note, also, that the 'Portion of Payment' indieated below is based on the minimum 'Cost Estimate,' which may not be the true eost as ultimately determined."

Furthermore, despite the faet that HAVA implementation began in 2003, there are still some ehallenges that lie ahead, ineluding ongoing efforts to improve the capabilitics of voting systems to meet seeurity and aeeessibility needs and the eompletion of the VoteCal project – California's long-term statewide voter registration database required by HAVA Section 303.

California will designate HAVA funding from federal appropriations in fiseal years 2008-2010 and interest earned to date in this State Plan budget for meeting Title III requirements and for future improvements in the administration of elections.

Based on California's estimated eumulative total of requirements payment funding, including interest earned to date, of $331,687,915 for fiscal years 2003-04 through fiseal year 2009-2010, the best estimate of the distribution is as follows:

HAVA Title III mandate	Cost Estimate or Allocation	Portion of payment
Voting systems (Section 301)	$195 million	58.79%
Provisional Voting (Section 302)	$0	0%
Voter materials at polling plaees (Seetion 302)	$0	0%
Statewide Voter Registration Database (Seetion 303)	$65,568,600	19.77%
Total alloeated/estimated	$260,568,600	78.56%
Total balance to be allocated for Title III requirements and improving the administration of federal elections	$71,119,315	21.44%

*The county contracts that provide a total of $195 million alloeated for voting system upgrades also allow counties to request reimbursement for the ineremental, allowable eost of voter education and poll worker training eosts assoeiated with voting system deployment and meeting other HAVA requirements that must be ineorporated into the eleetoral proeess. In part these needs are addressed by incorporating the state's "minimum requirements payment" of $11.6 million for purposes deemed allowable by the EAC into these eontraets.

Section 7

(Section 254(a)(7))

How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

The Secretary of State, pursuant to EAC guidance, will ensure the expenditures of the state for activities funded by the payment will be maintained at a level that is not less than the level of such expenditures maintained by the state for the 1999-2000 Fiscal Year. Throughout the implementation of HAVA, the Secretary of State has attempted to ensure that no HAVA funds were used to supplant local funding for activities already required by state law and to ensure that these and other "normal, ongoing" election expenses were not reimbursed with federal funds. The Secretary of State provides the means for ensuring appropriate use of HAVA funds, including preventing supplanting local funding with new, HAVA resources, through:

- Standard agreements (contracts), which identify the allowable uses of funding
- Reimbursement-based contracts, which require counties to submit supporting documentation for costs in order to receive HAVA funding
- Secretary of State internal review and approval of claims submitted by counties before payment, which in many cases has led to disapproval of some expenses claimed
- Regular, ongoing and daily communication with county elections officials to provide guidance on allowable uses of funding

The Secretary of State will continue to use these mechanisms to avoid supplanting with HAVA funds those election expenses that should be borne by state and local agencies.

Pursuant to an EAC Maintenance of Effort (MOE) policy adopted June 28, 2010, states are allowed to voluntarily submit plans to the EAC for review and comment on how a state intends to meets its MOE obligation under HAVA. California will submit such a plan to the EAC by the June 28, 2011, deadline prescribed in the final policy.

Section 8

(Section 254(a)(8))

How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the States will use to measure performance and the process used to develop such criteria, and a description of which officials will be held responsible for ensuring that each performance goal is met.

In its initial State Plan, which was incorporated into the 2004 State Plan update, the Secretary of State proposed the following:

> "(1) The Secretary of State, as Chief Elections Officer, in consultation with local elections officials and other interested parties, and after considering any voluntary guidelines adopted by the Commission pursuant to Subtitle B of Title III, shall:
>
> (a) develop performance goals and measures, with timetables, descriptions of criteria, the process used to develop the criteria, and identification of accountable officials, to determine the effectiveness of all programs and efforts receiving HAVA funds;
>
> (b) monitor, through consultations with local elections officials and interested individuals and organizations, the performance of the state, units of local government and other entities with respect to reaching goals and each and every provision of HAVA."

This proposal was never put into practice. On March 1, 2005, the California Secretary of State who initially undertook the task of implementing HAVA resigned. Pursuant to state law, the Governor appointed a successor who assumed office, following confirmation by both houses of the California State Legislature, on March 30, 2005. With the nine months left before the January 1, 2006, deadline to implement HAVA's full complement of requirements, the state was able to meet, for the 2006 election cycle, HAVA's Title III requirements. Performance measures, as envisioned under the initial State Plan, were not adopted.

However, California has performance measures, some of which have been put in place recently, which can serve as benchmarks for measuring the success of HAVA implementation for voting systems. These include:

- Requiring each county, as a condition of voting system approval, to report any Election Day problems and issues with voting equipment used in polling places
- Requiring, as a matter of state law, a manual tally of ballots cast in 1% in randomly selected precincts in each county (EC 15360)

- Requiring each county, as a condition of voting system approval, to allow for Election Observation Panels to publicly observe the electoral process, including the tally of ballots. County Election Observer Panel plans are available on line at www.sos.ca.gov/elections/eop.htm
- Requiring each county to report, prior to each statewide election, on the type of voting system it will use for the upcoming election. Information on the use of voting systems in counties can be found online at www.sos.ca.gov/elections/vs_election.htm

Additional information required for performance measures pursuant to HAVA is provided below:

Planning Element:	Voting systems – Section 301
Goal:	Document the performance of California's voting systems to continually improve the voting experience for California voters
Performance Measure	Incident reports on problems and issues with voting equipment deployed at polling places
Timetable	Ongoing – following each statewide election
Process for developing criteria	Voting system approval process (Elections Code (EC) sections 19100; 19201; and 19222)
Accountable official(s)	County elections officials; Secretary of State

Planning Element:	Voting systems – Section 301
Goal:	Document the performance of California's voting systems to continually improve the voting experience for California voters
Performance Measure	Manual 1% tally of ballots from randomly selected precincts
Timetable	Ongoing – following each statewide election
Process for developing criteria	EC section 15360
Accountable official(s)	County elections officials; Secretary of State

Planning Element:	Voting systems – Section 301
Goal:	Document the performance of California's voting systems to continually improve the voting experience for California voters
Performance Measure	Allow public observation of voting system deployment and use, including logic and accuracy testing and ballot tally
Timetable	Ongoing – during each statewide election
Process for developing criteria	Voting system approval process (EC section 15004)
Accountable official(s)	County elections officials; Secretary of State

Planning Element:	Voting systems – Section 301
Goal:	Document the deployment of HAVA-compliant voting systems
Performance Measure	Require each county to report to the Secretary of State the voting system it will deploy on Election Day prior to each statewide election
Timetable	Ongoing – before each statewide election
Process for developing criteria	Secretary of State
Accountable official(s)	County elections officials; Secretary of State

Planning Element:	Voting systems – Section 301
Goal:	Document the performance of California's voting systems to continually improve the voting experience for California voters
Performance Measure	Require voting system vendors to deposit an exact approved version of software and firmware into an escrow facility approved by the Secretary of State
Timetable	Ongoing – prior to voting system use in an election
Process for developing criteria	EC section 19103(a)
Accountable official(s)	Secretary of State

Planning Element:	Vote-by-mail balloting – Section 301
Goal:	Document the utilization of vote-by-mail balloting to determine the appropriate distribution of resources required to support activity level
Performance Measure	Require each county to report to the Secretary of State the following information: ▪ Percentage of registered voters who are registered as permanent vote-by-mail voters ▪ Percentage of registered voters that voted by vote-by-mail ballot ▪ Percentage of vote-by-mail ballots mailed to those cast

Timetable	Ongoing – after each statewide election cycle
Process for developing criteria	Secretary of State
Accountable official(s)	County elections officials; Secretary of State

Planning Element:	Provisional voting – Section 302
Goal:	Ensure that counties have instituted a free access system which allows provisional voters to ascertain whether their vote has been counted and, if not, obtain an explanation of the reason why
Performance Measure	Survey counties to ensure that a free access systems is made available to voters for each election
Timetable	Ongoing – after each statewide election cycle
Process for developing criteria	EC section 14310 (d)
Accountable official(s)	County elections officials; Secretary of State

Planning Element:	Polling place accessibility – Section 261
Goal:	Ensure compliance with the accessibility and privacy requirements for individuals with disabilities
Performance Measure	Evaluate California polling places to determine compliance, using the guidelines provided in the Polling Place Accessibility Checklist
Timetable	Ongoing
Process for developing criteria	Title 24 of California Code of Regulations, Americans with Disabilities Act Accessibility Guidelines
Accountable official(s)	County elections officials; Secretary of State

Also, California took steps during the 2006 and 2008 election cycles to ensure that HAVA requirements were met in a manner that fulfilled the intent and spirit of HAVA, including:

- Developing a new voting system testing and approval process with new benchmarks that included innovations like volume testing to better ensure the reliability of voting systems on Election Day; information on California's approval process can be found on-line at www.sos.ca.gov/voting-systems/cert-and-approval/vsys-approval.htm
- Issuing procedures for the proper use of all voting systems approved by the state to comply with state and federal requirements; the template to be used for developing voting system use procedures can be found on-line at www.sos.ca.gov/voting-systems/oversight/directives/use-procedures-2006.pdf
- Conducting parallel monitoring programs of voting systems in 2006 on Election Day to monitor actual in-use performance of equipment; parallel monitoring reports are available on-line at www.sos.ca.gov/voting-systems/oversight/eday-reports.htm
- Conducting Election Day Observation programs to provide on-site review of implementation of HAVA requirements at polling places; Election Day Observation reports are available on-line at www.sos.ca.gov/voting-systems/oversight/eday-reports.htm
- Monitoring and documenting Election Day concerns reported by voters to the Secretary of State's toll-free voter information hotline
- Issuing standards to election officials on effective poll worker training. The standards are available on-line at www.sos.ca.gov/elections/pollworker.htm
- Providing regular, ongoing guidance to election officials, including issuing a HAVA compliance manual. The compliance manual is available on-line at www.sos.ca.gov/elections/hava_compliance_manual.htm
- Requiring counties to submit security plans and communications plans for use on Election Day

These measures will continue to serve as benchmarks of HAVA performance.

Section 9

(Section 254(a)(9))

A description of the Uniform, Nondiscriminatory State-based Administrative Complaint Procedures in Effect Under Section 402.

(1) Section 402 (pp. 126-128) requires the state to establish and maintain a state-based administrative complaint procedure that:

(a) is uniform and nondiscriminatory;

(b) allows any person who believes that there is a violation of any provision of Title III to file a complaint;

(c) requires that the complaint be in writing and be notarized;

(d) permits consolidation of complaints;

(e) requires that there be a hearing on the record if the complainant requests such;

(f) an appropriate remedy be provided if the State determines that there is a violation of Title III;

(g) the complaint be dismissed and that the results be published if it is determined that there is no violation;

(h) a final determination be made within 90 days from the date the complaint is filed unless the complainant consents to a longer period for making such a determination;

(i) alternative dispute resolution procedures be established for resolving the complaint within 60 days if the State fails to meet the 90 day deadline set forth above.

(2) Under existing procedures, any person may complain to the Secretary of State, as Chief Elections Officer, that election laws or procedures have been violated, are being violated or are about to occur. A toll-free telephone number for this purpose is provided and is widely disseminated. Complaints may also be submitted to the Secretary of State in writing. All credible allegations are investigated by one or more units of the Office of the Secretary of State, often in conjunction with local elections officials and other state officials.

(3) The Secretary of State, after consulting with local elections officials and interested individuals and organizations, has established a uniform, nondiscriminatory state-based administrative complaint procedure in compliance with Section 402 of HAVA. The procedure provides individuals with a meaningful, expedited means of voicing a complaint concerning the implementation of Title III of HAVA and an appropriate remedy if a violation has occurred. The procedure addresses the accessibility needs of minority language voters and individuals with disabilities.

(4) The complaint procedure in effect authorizes any individual residing in the State of California to file a written complaint with the Secretary of State alleging that Title III has been violated, is being violated or is about to be violated. Pursuant to HAVA, the complaint must be notarized. (The Complainant must sign the complaint after being sworn by a notary public.) The complaint may be filed on a form prescribed and made available by the Secretary of State or on any other form that meets the specified requirements. Forms prescribed by the Secretary of State are required to be translated into appropriate languages. The complaint may be filed in person at any office of the Secretary of State or mailed to Secretary of State, Elections Division, HAVA Complaint, 1500 11th Street, Sacramento, CA 95814. The complaint must be filed within 60 days after the occurrence of the alleged violation or within 90 days after the Complainant becomes aware of the alleged violation, whichever is later. The Secretary of State may consolidate complaints when appropriate. The Complainant may request a hearing on the record. The Secretary of State determines whether the hearing is oral or is based on written testimony. A final determination must be made within 90 days of filing the complaint. An appropriate remedy must be provided if a violation is found. In any case, the determination shall be in writing and must be posted on the Secretary of State's website, unless such posting might compromise a criminal investigation or other enforcement action. If a determination is not made within 90 days, then the complaint is referred to a neutral Hearing Officer who must make a determination within 60 days of the initial 90-day deadline, noting any provisions in the proceedings used to make a determination that require reasonable accommodations for a complainant. The determination must be posted on the Secretary of State's website, unless such posting might compromise a criminal investigation or other enforcement action.

The Secretary of State is continually examining its website – one source of information about the complaint procedure – to assess its usability for all users, including users with disabilities and those with alternative-to-English language needs. Those efforts are ongoing.

Section 10

(Section 254(a)(10))

If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

A total of $84.6 million was received, pursuant to HAVA Title I.

These funds were used extensively, as previously noted, by the Secretary of State to comply with HAVA Title III requirements and many of the elements included in the initial State Plan that were originally anticipated to be funded with Section 251, Title III funding.

As previously noted:

Voter Education and Poll Worker Training

Voter education and poll worker training efforts, expected to be funded with Section 251, Title III fund, were initially funded via a $9.9 million statewide grant of Title I, Section 101 funds. Those funds were allocated leading up to the November 2004 General Election. The Secretary of State also used Title I, Section 101 funding for a voter outreach program administered directly by the Secretary of State in 2004. A total of $3.8 million was allocated for this purpose, although $2.9 million of those expenses were disallowed following a federal, EAC audit. A total of $496,000 in Title I, Section 101 funding was used subsequently by the Secretary of State's office on statewide voter education efforts to augment local efforts, in consultation and collaboration with local election officials, other state and local agencies, community organizations and private groups (e.g. the League of Women Voters of California).

Counties used a limited amount of Section 251 funding for this purpose – approximately $8.6 million statewide. Subsequent EAC guidance has also clarified that HAVA funding used for voter education programs must focus on the use of new voting systems and efforts that provide overvote protection, including receiving a replacement paper ballot to correct ballot errors.

As indicated, to support county efforts, statewide voter education efforts were undertaken using Section 101 funding. Those statewide efforts included developing voter education materials used by state and local officials, and community-based organizations through partnerships with state agencies, such as the California Department of Education, partnerships with local elections officials and partnerships with nonprofit groups such as Independent Living Centers. These materials were also made available on state, county and nonprofit websites, including the League of Women Voters of California Smart Voter webpage and in the League-sponsored Easy Voter Guide.

In California's initial State Plan, published on July 17, 2003, the Secretary of State proposed to "consider developing voter information in appropriate languages for posting at polling places" and to work to "ensure that all information provided at polling places be accessible to the widest possible audience." The Secretary of State developed voter information for posting at polling places pursuant to California Elections Code Section 2300. The Voter Bill of Rights poster outlined in Elections Code Section 2300 is provided to counties upon request and production of the Voter Bill of Rights poster is partially funded by HAVA Section 101 funds. This posting supplements information provided in sample ballots, which are mailed to registered voters and are available at polling places for any voter who wishes to view one at the polling place. Additionally, the Secretary of State has made its statewide Voter Information Guide material available on audiotapes, which are available on request; audio MP3 files and other materials available on its website; and produced its "Your Voting Rights" brochure in American Sign Language, which is made available on DVDs and posted on the Secretary of State's website.

Statewide voter registration database requirements

Title I, Section 101 funding was used for the purpose of achieving interim compliance with Section 303 requirements to establish a statewide voter registration database, pursuant to the MOA executed with the US DOJ on November 2, 2005. A total of $3.9 million was used to design and implement technological upgrades to the existing CalVoter system – previously used to assist counties with list maintenance activities – to meet this requirement. Modifications to the CalVoter system included establishing the necessary interfaces with the Department of Motor Vehicles, the Social Security Administration, the state Department of Health Services, and the state Department of Rehabilitation and Correction. Also included in this funding was the cost of modifying local election management systems to ensure that those systems, which until the enactment of HAVA were the sole repository of voter rolls, would integrate and synchronize data with the modified CalVoter system. Staff time necessary for developing regulations and other administrative costs necessary to implement the CalVoter interim solution were also funded with Section 101 funding. Finally, necessary modifications to California's voter registration affidavits to comply with HAVA requirements – including specific language required to be included and addition of registrant identification information for purposes of verification (e.g. driver's license data) – were funded with Section 101 resources. These changes required the printing of new voter registration cards to replace existing stock.

Voting Systems

Section 102 punch card voting system replacement funds totaling $57.3 million statewide were distributed to eligible counties beginning in 2004. These funds, in conjunction with state Voting Modernization Bond Act of 2002 funds and HAVA Title II, Section 251 requirements payment funding allocated in 2006, were used by county election officials to procure and deploy voting equipment in an effort to comply with new HAVA Section 301 voting system standards.

Section 101 funds were also used to assist the Secretary of State with implementation of new voting system standards. Funding was used to defray the cost of additional security measures imposed by the Secretary of State following withdrawal of approval and approval with conditions of DRE voting equipment in 2004. These funds were also used for parallel monitoring efforts that attempt to monitor the performance of voting equipment on Election Day. The uniform definition of a vote for California voting systems, and the top-to-bottom source code review conducted by the Secretary of State in 2007 were paid for with this funding. Finally, additional staff costs associated with certifying new voting systems intended to comply with HAVA's new voting system standards were funded, in part, with these HAVA resources. For example, the State of California now tests voting systems using the disability standards in the federal 2005 Voluntary Voting System Guidelines (VVSG), which include provisions for usability and accessibility for vision, dexterity, mobility, hearing, speech, English proficiency and cognition (see Section 3.2 of Volume I of the VVSG on pages 53-64). California was the first state to test voting systems using these standards, and these standards continue to be used by California in its testing and approval for all voting systems. These testing efforts employ consultants who test each voting system with the help of voters with a full range of disabilities. The Secretary of State has also established and sought the input of a Voting Accessibility Advisory Committee (VAAC), providing the VAAC with information on voting system standards and briefings on the voting system testing and approval process, while seeking its advice on proposed standards and the voting system approval process.

The introduction of new voting systems was also accompanied by programs, some of which were supported in whole or in part with HAVA Section 101 funds, to educate poll workers, promote voter understanding and ease-of-use of new voting equipment, including use by voters with disabilities and voters with alternative language needs. The programs included:

- Developing new voting system use procedures
- Issuing poll worker training guidelines
- Creating a HAVA compliance manual produced by the Secretary of State in collaboration with counties
- Providing instructions on the use of new voting systems, which each county included in sample ballots mailed to each voter, and which were also posted on the Secretary of State's website and each county's website
- Conducting outreach and education activities in partnership with counties, schools, state and local government, and community service organizations such as the League of Women Voters, and Independent Living Centers

These efforts were accompanied by HAVA allowed voter education programs per HAVA Section 301 (a)(1)(B) to educate voters on correction of overvotes where a paper-based, centrally tabulated voting system was in use through independent mailings to voters, and mailings in conjunction with delivery of sample ballots or vote-by-mail ballots.

Section 11

(Section 254(a)(11))

How the State will conduct ongoing management of the plan, except that a State may not make any material change in the administration of the plan unless the plan is appropriately noticed and published in the Federal Register.

As previously noted, the Secretary of State's office has undertaken numerous, meaningful steps to manage HAVA implementation, and to ensure that California's county elections officials are fully informed of HAVA requirements and programs. Those efforts, which continue still, include:

- Designating a single Deputy of Secretary of State for HAVA Activities with responsibility for overseeing and coordinating HAVA activities
- Establishing a new Office of Voting System Technology Assessment to provide for testing and approval of voting systems intended to comply with HAVA Section 301 voting system standards
- Developing internal control procedures in reaction to, and consistent with, audit findings
- Maintaining communication, as necessary and required, with the EAC – the federal oversight authority for HAVA – to request guidance and clarification of HAVA requirements
- Communicating regularly, and as requested, with the US DOJ, the enforcement authority for HAVA
- Creating, in collaboration with election officials, a HAVA Compliance Manual, which can be found on the Secretary of State's website at: www.sos.ca.gov/elections/hava_compliance_manual.htm
- Drafting and executing standard contracts, in consultation and collaboration with counties, that specify the level and appropriate use of HAVA funding
- Providing ongoing written guidance to all counties on a regular basis regarding HAVA requirements, including associated requirements for meeting federal guidelines for receipt of federal funds
- Serving as a resource for individual county questions and concerns on a daily basis
- Conducting monthly conference calls with all counties

- Secretary of State staff attendance at monthly CACEO meetings and subcommittee meetings, and attendance at biannual CACEO conferences

- Conducting an Election Day Observation program intended to provide on-site feedback about HAVA implementation

These efforts will continue to be employed by the Secretary of State to conduct ongoing management of the State Plan.

Section 12

(Section 254(a)(12))

In the case of a State with a state plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the state plan for the previous fiscal year and of how the State succeeded in carrying out the state plan for such previous fiscal year.

Since the submission of the last State Plan update to the EAC in 2004, California complied with the requirements of HAVA, and largely succeeded in its efforts to carry out the State Plan, though not in the manner specified in the State Plan.

The factors that contributed to deviations in steps outlined in earlier State Plans proposed under prior administrations have been noted previously in this State Plan, which include:

- Unexpected changes in administration at the Secretary of State's office
- A series of annual statewide elections from 2002 through 2006, including a first-ever gubernatorial recall election in California
- Audit scrutiny at both the state and federal level that, while appropriate, diverted resources from implementing elements of the State Plan
- Delay in receiving HAVA funding and HAVA guidance
- Evolving policies on voting system standards
- Delays in vendors bringing forward voting systems to be tested and approved pursuant to voting system standards
- The discovery of shortcomings in voting system design and performance during voting system testing that resulted in the need to re-test equipment multiple times
- The need to respond to legitimate US DOJ concerns about the shortcomings of the state's plans to implement an "interim solution" to HAVA Section 303 statewide voter registration database requirements
- Evolving interpretations of HAVA requirements with respect to verification of voter registrant information, including a federal court decision
- Evolving EAC interpretations and guidance on the appropriate use of HAVA funds

The original State Plan was enacted in 2003 and updated in 2004. Both the original Plan and the subsequent 2004 update were done prior to the state embarking on any HAVA implementation efforts. Now, six years after the adoption of the last State Plan update, the Secretary of State has learned a great deal in terms of efforts to implement HAVA. This State Plan update is a reflection in part of what the Secretary of State has learned since first beginning to implement HAVA Title III requirements in 2005. And, in many respects, the seemingly strong interest exhibited in Congress in recent years about making fundamental changes to electoral policy, including HAVA policy, indicate that California is experiencing this same evolution of thinking on the best methods to achieve HAVA's goals.

Notwithstanding encountering some significant stumbling blocks to smooth implementation of HAVA, California was able to make significant progress in its efforts

tc implement HAVA and even to realize in practice what the original State Plans outlined. As previously noted, through the 2009 election cycle, California's elections officials managed to implement HAVA to the fullest extcnt possible, including:

- Creating the complaint procedures required as a prerequisite to receiving HAVA funding
- Expanding the capacity and languages available on the Secretary of State's toll-free voter information hotline
- Establishing the Secretary of Statc as the single statewide office to serve as a resource for military and overseas voters and for the counties that serve those voters
- Ensuring that provisional voters can check, through a free access system, the status of their provisional ballot to determine if their ballot was counted, and if not, why not
- Creating a uniform definition of a vote cast on voting systems in use in California
- Establishing an interim solution statewide voter registration database that integrates and synchronizes the 58 county election management systems containing California's voter rolls into a single, statewide system, pursuant to an MOA negotiated with the US DOJ
- Modifying state voter registration forms in accord with HAVA requirements
- Ensuring that the interim solution statewide voter registration database, and accompanying regulations, provide for verification of registrant identification data, and that HAVA provisions for first-time voters who register by mail are met
- Replacing and eliminating punch card voting systems in California through thc HAVA Section 102 incentive program
- Testing and approving voting systems intended to be HAVA-compliant, so that those systems were available for acquisition and deployment by California counties
- Executing standard agreements with California's 58 counties to allocatc HAVA Title II funding to help defray the costs of Title III requirements and to improve polling place accessibility
- Ensuring that, by the 2006 November General Election, all counties had deployed voting systems that met the requirements outlined in HAVA, including making available at every polling place at least one voting unit designed to be accessible to voters with disabilities
- Developing, pursuant to state law, poll worker training guidelines and updating those standards in 2010
- Providing HAVA Title I, Section 101, and HAVA Title II, Section 251, resources to counties to assist with poll worker training and voter education
- Providing ongoing, regular and daily guidance to counties on all aspects of HAVA, including developing and publishing a HAVA compliance manual
- Meeting voter education and information requirements as provided for in HAVA, including providing to counties, upon request, a Voter Bill of Rights

As previously described, the biggest diffcrences between the 2004 State Plan and this State Plan update are the method of implementation, especially the funding mechanisms utilized. The Secretary of State relied more heavily on thc usc of more flexible Section 101 funding than was anticipated in the State Plans previously submitted.

Major changcs in the Statc Plan being submitted now, includc:

- Combining voter education and poll workcr training funding, previously budgeted at $70 million with voting equipmcnt procurement costs, previously budgcted at $75,677,843, into a single $195 million contract that allows counties to detcrmine the appropriate level of expenditure for these related activities to meet local needs. The $49,522,157 difference in spending levels between the 2004 State Plan update and this State Plan reflects a consensus reached about the appropriate level of funding achieved between the Secretary of State and county election officials under prior administrations.
- The budget for the statewide voter registration database now fully acknowledges the costs of developing and implementing that system - increasing from $40 million to $65,568,600 thc allocation of HAVA Title II, Scction 251 funding for that purpose.
- The process described for developing performancc measures proposed under prior administration was not implemented.
- Finally, the initial State Plan provision for an Election Academy, which was incorporated into the 2004 State Plan update, was not implemented. However, California county election officials through its umbrella, professional association – the CACEO – initiated a review of HAVA and its implications for the administration of elections in California and also created training courscs for its membership that include significant review of HAVA and its requirements. These efforts were indcpcndently funded; no HAVA resources were used for these efforts.

The effect of these changes in spending levels reflects the calculation of a reserve of $71,119,315 in this updated State Plan, which will be used for meeting Title III requirements or for future improvements in the administration of elections.

A summary sheet detailing HAVA expenditures to date has been included in this section of the State Plan update in response to public comments. The summary reflects the fact that the bulk of all HAVA funds received (79.5%) have been allocated to counties in recognition of the fact that counties administer elections – establishing polling places, deploying voting systcms, training poll workers and educating voters.

	HAVA Expenses and 2010-11 Budget									
Fiscal Year	02-03/03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	Interest Earned	Total
HAVA Revenues:										
Section 101(election admin.)	$27,340,830								$2,527,059	$29,867,889
Section 102(punchcard)[a]	$57,322,707									$57,322,707
Section 251(Title III funding)[b]	$94,559,169	$169,677,955				$12,908,853	$11,225,089	$7,857,561	$38,992,863	$335,221,490
Section 261 Polling Place Accessibility Improvement (DHHS $)	$1,371,756	$985,955	$987,918	$1,113,936	$1,113,511	$1,279,848	$1,279,927	$1,276,978		$9,409,829
Total Revenues Available	**$180,594,462**	**$170,663,910**	**$987,918**	**$1,113,936**	**$1,113,511**	**$14,188,701**	**$12,505,016**	**$9,134,539**	**$41,519,922**	**$431,821,915**
HAVA Activities									Encumbered	
Voting systems upgrades - county grants[c]			$101,611,033	$5,680,011	$87,667,059	$41,897				$195,000,000
Statewide Database (VoteCal)				$380,562	$1,190,085	$1,284,020	$4,437,403	$4,570,988	$53,736,942	$65,600,000
Interim Solution-SOS[d]		$724,878	$311,919	$97,437	$71,880	$29,395	$153,619		$477,000	$1,866,128
Interim Solution-County Retrofit			$2,776,950	$210,831	$130,328					$3,118,109
Voter Educ Develop and Dissemination		$114,768	$641,000	$288,927	$316,760	$128,656	$115,200	$500,000	$500,000	$2,605,311
HAVA Voting Systems/ Testing & Certification[e]			$3,253	$642,194	$0	$19,466	$19,295	$200,000	$200,000	$1,084,208
Poll Monitoring/Election Observation	$84,843	$10,419	$46,491	$64,634	$63,348					$269,735
Elect Asst for Indiv with Disabilities (EAID)			$2,041,022	$0	$796,196	$2,342,575	$1,224,147	$1,609,927	$1,395,962	$9,409,829
Administration[f]	$1,514,252	$1,280,000	$642,504	$1,282,879	$953,025	$1,009,841	$1,125,267	$1,605,000	$1,605,000	$11,017,768
Poll Worker Training		$6,731,724								$6,731,724
County Security		$1,537,783								$1,537,783
Parallel Monitoring		$278,319		$300,828						$579,147
Punch Card Replacement	$51,114,000	$3,799,000	$2,410,000							$57,323,000
Outreach (Other Expenditures)[g]	$1,449,000									$1,449,000
Poll Worker Training/Election Assessment								$300,000		$300,000
Total	**$54,162,095**	**$14,476,891**	**$110,484,172**	**$8,948,303**	**$91,188,681**	**$4,855,850**	**$7,074,931**	**$8,785,915**	**$57,914,904**	**$357,891,742**

a $1,156,759 earned in interest on Section 102 funds has been moved to Section 251 funding per guidance from EAC

b Funding for FY 08-10 has been appropriated by Congress, and may be claimed by California after revised HAVA State Plan is accepted by EAC.

c Contract for remaining balance of $41,897 declined by county in FY 08/09

d FY 05-08 expensed from 101 funds, FY 09-10 expensed from 251 funds

e FY 05-08 expensed from 101 funds, FY 09-11 expensed from 251 funds FY 06/07 includes source code review

f FY 02-09 expensed from 101 funds, 09-11 pro-rated to all 3 funds

g $3,810,000 originally expensed, $2,361,000 replaced by state funds in FY 07-08 in accordance with EAC audit findings

Summary of State and County HAVA Expenses

Activity	Grants to counties	State expenses	
Costs include expenditures and encumbrances to date			
Voting System upgrades			
Purchasing new equipment* Sec. 301	$195,000,000		
Punch card replacement Sec. 102	$57,323,000		Sec 102
Security compliance (counties) or testing (state)	$1,537,783	$1,663,355	
Poll Worker Training			
Direct county grants	$6,731,724		
Spent as part of voting system upgrades contracts*	$10,271,989		
Election observation/poll worker training assessment		$144,342	
As part of HAVA Section 261 (EAID) funding	$269,257		Sec 261
Voter Education			
Spent as part of voting system upgrades contracts*	$10,271,989		
Statewide voter education		$4,054,311	
As part of HAVA Section 261 (EAID) funding	$333,559		Sec 261
Statewide Database			
Interim Solution county contracts	$3,118,109		
Interim Solution SOS costs		$1,866,128	
VoteCal County support	$415,763		
VoteCal State costs		$6,876,307	
Vote Cal projected costs	$3,727,908	$54,580,022	
Adjusted totals**	$268,457,103	$69,184,465	

** Totals adjusted to avoid double posting categories marked with *
Totals do not equal all funds expended or encumbered, as not all expense categories were included

Description of county and statewide voter education and pollworker training efforts:

County efforts

A combined $14.6 million in HAVA funding was spent for voter education and pollworker training programs:

- $6.6 million was allocated to counties via a grant program created by then-Secretary of State Kevin Shelley for the November 2004 election
- $8 million in voter education and outreach efforts through the $195 million voting system upgrade contract with the counties executed in 2005 and 2006

Overall, 46 counties participated in one or both of these programs.

Poll worker training		
Activity (funded by HAVA)	**Number of counties**	**Notable practices**
Update pollworker training manual	34	Additional focus on assisting voters with disabilities and voters with alternative language needs; additional focus on provisional voting rights; additional focus on assisting first-time voters
New training techniques	26	On-line pollworker training; CD/DVD training (take home materials); professional trainers; role-playing; individualized classes focused on voting systems, provisional voting requirements, needs of voters with disabilities; needs evaluation to improve pollworker training
New pollworker recruiting efforts	12	Additional focus on recruiting bilingual poll workers; student pollworker programs; advertising; designated recruitment coordinator; adopt-a-poll programs; ethnic community advisory group assistance; recruiting county employees; direct mail programs to voters
New pollworker feedback/monitoring	5	Cell phones for direct contact with polling place workers; surveys and evaluation forms for pollworkers

Voter Education		
Activity (funded by HAVA)	**Number of counties**	**Notable practices**
Advertising – new HAVA requirements	26	Alternative language newspapers; alternative language radio; cable TV; direct mail
Use of sample ballot – new pages on HAVA requirements	10	Casscte recording of sample ballot
New materials – voting systems, new HAVA requirements	13	Brochures, voting system videos, outreach materials in multiple languages; education materials on audio cassette
Website enhancements	9	Provide new HAVA information (provisional voting; new voting systems); provide multilingual information
Community events	10	Ethnic fairs; early voting demonstrations; outreach to underserved communities that historically have low voter turnout; voter education videos in multiple languages

Statewide activities sponsored by the Secretary of State

Secretary of State-sponsored statewide voter education efforts in 2006 and 2008 election cycles ($807,186)
Election Day and Pollworker Training Observation programs in 2006 and 2008 election cycles ($218,000)

Voter Outreach and Education

Activity	Target Audience	Notable practices
Community-based programs	Voters with disabilities; alternative language voters; general public	Downloadable audio version of Voter Information Guide (VIG) (2008); large print VIG in seven languages (2008); partnerships with Independent Living Centers, California Council of the Blind, county elections officials to distribute "Know Your Voting Rights, A Guide to Voters with Disabilities" brochure and to host demonstrations of new voting equipment (2006 and 2008); website accessibility improvements (2008); Immigration and Naturalization swearing-in ceremony events; partnership with NALEO/La Opinion/KMEX (LA) (2006); "A Voting Guide for Inmates" distributed through county election officials, law enforcement and parole officials (2008); League of Women Voters partnership on Easy Voter Guide and SmartVoter website support (2008); Democracy at Work program partnership with businesses, nonprofits and labor unions to reach voters in their workplace (2008)
Mock Election and young voter outreach	Youth, first-time voters, students	Partnership with State Department of Education that led to participation of 600 middle schools and high schools reaching 260,000 students in 2008 and 500 schools and 230,000 students in 2006; partnership with CSSA and UCSA, student associations of CSU and UC campuses
Social Networking	Young voters, first-time voters	You Tube "Why I'm Voting" video challenge; Facebook "My Voice. My Choice. My Vote" page (2008)
Outreach and Advertising	General public	Partnership with sports franchises and county elections officials at sporting events (2008); advertising in 125 newspapers throughout the state for June and November 2006 elections
Materials production	Voters with disabilities; general public	"Know Your Voting Rights, A Guide to Voters with Disabilities" (2006); Website version of "Know Your Voting Rights" available in American Sign Language (2008); "MyVote California"(2008); and "A Guide to Voting in California" (incorporates "Know Your Voting Rights" information) translated into 7 languages (2008)
Website improvements	General public	Voter Education and Outreach page (one-stop shop for voter information) (2006 and 2008); MyVote Election Information button posted by more than 75 organizations on hosted websites to link to Secretary of State voter information (2008); Best Practices of Elections Officials webpage (2008)
State/Local Government partnerships	State workers, general public	California state employee pay stub messages; State Department of Education mock election partnership; midnight registration program; Secretary of State-sponsored polling place (2006 and 2008)
UOCAVA outreach	Military and Overseas voters	Created new resources for overseas voters distributed through the Federal Voting Assistance Program, Overseas Vote Foundation and US Postal Service and others; distributed voter registration and education materials to VA facilities throughout California

Poll worker Training

Activity	Completed	Additional information available at
Pollworker training standards	2006	http://www.sos.ca.gov/elections/pollworker.htm
Election Day and Pollworker Training Observation programs	2006 and 2008	http://www.sos.ca.gov/voting-systems/oversight/eday-reports.htm
Election Officials – Best Practices website	2008	http://www.sos.ca.gov/elections/best-practices.htm
Support for pollworker survey conducted under UC Berkeley Institute for Governmental Affairs	2006	http://earc.berkeley.edu/StateReport.final.pdf http://earc.berkeley.edu/StateReport.NovemberPWSurvey.final.pdf

Section 13

(Section 254(a)(13))

A DESCRIPTION OF THE COMMITTEE WHICH PARTICIPATED IN THE DEVELOPMENT OF THE STATE PLAN IN ACCORDANCE WITH SECTION 255 AND THE PROCEDURES FOLLOWED BY THE COMMITTEE UNDER SUCH SECTION AND SECTION 256.

HAVA State Plan Advisory Committee

The State Plan update Advisory Committee appointed by Secretary of State Debra Bowen comprised 13 members, including:

- Local elections officials from the two most populous counties in California, as required by HAVA section 255(a), and the then-president of the California Association of Clerks and Elections Officials
- Voting rights advocacy groups representing voters with disabilities, voters with alternative language needs, minority voting rights advocates, and voters generally
- Political scientists possessing academic credentials and practical experience directly related to the administration of elections and the electoral process

The membership of the State Plan update Advisory Committee is described below in detail. The process used to develop and publish the State Plan update follows the detailed description of the Advisory Committee membership.

Advisory Committee members:

Ana Acton
FREED Center for Independent Living

Ana Acton lives in Nevada City and is the Executive Director for FREED Center for Independent Living serving Nevada, Yuba, Sutter, Colusa, and Sierra counties. As a non-profit Independent Living Resource Center, FREED's goal is to empower people with disabilities to exercise their civil rights in becoming active, productive members of our community. FREED serves people with disabilities regardless of age or type of disability. Since 2004, Ms. Acton has worked with FREED to provide independent living services and ensure equal access to the community for people with disabilities.

Michael Alvarez
Professor of Political Science, Caltech
Caltech/MIT Voting Technology Project

R. Michael Alvarez is a professor of Political Science at the California Institute of Technology (Caltech). Since arriving at Caltech as an assistant professor in 1992, Professor Alvarez has focused most of his research and teaching on the study of electoral politics in the United States. He has written five books, three of which focus on election administration and voting technology. Professor Alvarez currently is Co-Director of the Caltech-MIT Voting Technology Project, researching technological solutions to electoral problems. He received his B.A. in political science from Carleton College in 1986, and his Ph.D. from Duke University in 1992.

Ardis Bazyn
California Council of the Blind

Ardis Bazyn is currently the Membership Chair of the American Council of the Blind based in Washington, D.C.; the primary voting advocate for the California Council of the Blind, President of the Independent Visually Impaired Enterprisers and Secretary of the Randolph Sheppard Vendors of America. She is a motivational speaker, business coach and writer with Bazyn Communications. She has published numerous articles and books. In 2001, she compiled a booklet for Blind Students of California, "A Guide to a Successful College Experience." She has owned several businesses and has been active in a variety of business and consumer organizations.

Chris Carson
Government Director
Board of Directors, League of Women Voters of California

In January 2005, Chris Carson joined the Board of Directors of the League of Women Voters (LWV) of California as Government Director. In that capacity, Ms. Carson has been responsible for developing and managing education and advocacy in the areas of redistricting, campaign finance, open government, state and local finance relationships and elections/voting rights issues. She has served on the Civil Liberties Taskforce and Immigration Study Committee of the LWV of the United States. Ms. Carson has been an extremely active member of the League of Women Voters for 25 years, working at the national, state and local levels. She is a third generation native of the Los Angeles area. She received a B.A. in History from Immaculate Heart College in Los Angeles, as well as an M.A. in History from the University of Southern California. Following her graduate work, she taught American History, particularly early American history and American Government, at several colleges in Southern California. Ms. Carson also served as Director of Education for Heritage Square Museum, a small historic preservation museum. She is active in the Burbank community, including having recently served on the City's Charter Revision Commission.

Kathay Feng
Executive Director
California Common Cause

Kathay Feng is the Executive Director of California Common Cause. California Common Cause is a non-profit, non-partisan citizens' lobby organization. California Common Cause has anchored a statewide coalition of election reform groups, called California Voter Empowerment Circle (CalVEC) that meets regularly to talk about major election policies. Ms. Feng has more than 10 years of experience working in the area of election reform. She recently co-authored and played a leadership role in winning the passage of Proposition 11 to reform California's redistricting process. Prior to joining Common Cause in 2005, she directed the Voting Rights and Anti-discrimination Unit of Asian Pacific American Legal Center. Ms. Feng serves, or has served, on the Asian Pacific Policy & Planning Council, the California Secretary of State's Advisory Committee on Voter Participation and Outreach, Los Angeles County Human Relations Commission, LAPD Police Chief's API Forum, the Asian Pacific American Police Advisory Council, Organization of Chinese Americans, and the National Asian Pacific American Women's Forum's Los Angeles Board. She was responsible for organizing poll monitoring of hundreds of poll sites in Southern California, building a statewide coalition to advocate for communities in the 2001 redistricting process, and the creation of the Office of Independent Review providing oversight for the Los Angeles County Sheriff's Department and representing hate crime victims. She is a graduate of UCLA Law School and Cornell University.

Rosalind Deborah Gold
NALEO Educational Fund
Senior Director of Policy, Research and Advocacy

Rosalind Gold serves as Senior Director of Policy, Research and Advocacy with the National Association of Latino Elected and Appointed Officials Educational Fund, where she has worked for two decades on policy analysis and research for the naturalization and Latino civic engagement efforts of the organization. Ms. Gold coordinates the research for several of the Fund's publications, including its *Directory of Latino Elected Officials,* and the biennial *Latino Election Handbook.* Ms. Gold also has extensive policy expertise in the areas of voting rights and the decennial Census. She also serves on the advisory committees and boards of several public affairs and research efforts, including the National Institute on Money in State Politics. Ms. Gold received her J.D. from Harvard Law School and B.A. from Pomona College in Claremont, California.

Alice A. Huffman
State President
National Association for the Advancement of Colored People (NAACP), California State Conference

Alice A. Huffman is the president of the California State Conference of the NAACP and has served in this capacity since October 1999. She is the first woman to hold this post. Ms. Huffman also is a member of the National NAACP Board of Directors. Ms. Huffman was appointed by Governor Schwarzenegger to serve on the California State Parks and Recreation Commission. She also serves on the board for California Center for Civic Participation, on T-CAP, which is a consumer advisory panel to AT&T and is a member of the Wells Fargo Advisory Committee. Ms. Huffman is founder and President/CEO of A.C. Public Affairs, Inc., a public affairs firm that specializes in public policy and grass roots advocacy. She is a member of the Rules Committee for the Democratic National Committee and the California Democratic Party. She was co-chair for the Site-Selection Committee and later named chair for the 2004 Democratic National Convention Committee. Ms. Huffman was inducted into the Los Angeles African American Women Political Action Committee's (LAAAWPAC) Political Hall of Fame in April 2002, for her outstanding achievements as a social activist in the minority community. Ms. Huffman is a graduate of the University of California Berkeley with honors in Social/Cultural Anthropology, with advance studies at University of Pennsylvania, University of California Davis, and University of Southern California. Ms. Huffman is a member of Phi Beta Kappa, and the Etta Gamma Omega Chapter of Alpha Kappa Alpha.

Margaret Johnson
Advocacy Director
Disability Rights California

Margaret Johnson has worked for Disability Rights California for more than 20 years. She was hired as a staff attorney, promoted to a senior attorney and then to managing attorney over her years at Disability Rights California. Ms. Johnson specializes in special education issues and developmental disabilities service system eligibility. She also specializes in Americans with Disabilities Act litigation, including public transit litigation. Important class actions brought include cases against the Bay Area Rapid Transit and the California State Lottery. She became the managing attorney of the Bay Area Regional Office in 1999 and held that position until she moved to San Diego in 2001 to set up a new regional office, which she managed until 2006. In March 2006 Margaret accepted a position as Disability Rights California's Advocacy Director and moved to the legislative unit in Sacramento, where she supervises that unit, its peer self advocacy units and serves as communications director. She is on the Board of Directors for the National Disability Rights Network, the protection and advocacy system member organization, and currently serves as the President of the Board. Over the years Ms. Johnson has served on numerous disability related organizations' boards, including Through the Looking Glass, Disability Rights Education and Defense Fund, The

Berkeley Center for Independent Living, the Access Center of San Diego, the Axis Dance Company and the Bay Area Outreach and Recreation Program.

Neal Kelley
Orange County Registrar of Voters

Neal Kelley is the Registrar of Voters for Orange County. Orange County is the second most populous county in California with 1.6 million registered voters, requiring language support in English, Chinese, Korean, Spanish, and Vietnamese. Mr. Kelley joined the county as Chief Deputy Registrar in May 2004 and stepped in as Acting Registrar the following year. Mr. Kelley was awarded the 2005 Election Center's Best Practices award for outstanding poll worker recruitment program. He received his Bachelor of Science Degree in business and management from the University of Redlands and his Master's in Business Administration from the University of Southern California. Prior to joining the County, Kelley developed two companies of his own, served for three years as an officer with the San Bernardino Police Department, and was an adjunct professor with Riverside Community College's Business Administration Department.

Eugene Lee
Asian Pacific American Legal Center

Eugene Lee is an attorney at the Asian Pacific American Legal Center (APALC). Founded in 1983, APALC is a nonprofit organization dedicated to advocating for civil rights, providing legal services and education, and building coalitions to positively influence and impact Asian Pacific Americans, and to create a more equitable and harmonious society. APALC is affiliated with the Asian American Justice Center in Washington, D.C. Mr. Lee is the Project Director for APALC's Voting Rights Project, which focuses on protecting the rights of Asian Pacific American voters. He orchestrates APALC's election day poll monitoring efforts, works with local and state coalitions to promote civic participation among the Asian Pacific American community, and provides training to community-based organizations on the language assistance provisions of the Voting Rights Act. Prior to joining APALC, Mr. Lee practiced with law firms in New York and Los Angeles. He received his undergraduate degree from Duke University and his law degree from Columbia Law School.

Dean C. Logan
Los Angeles County Registrar-Recorder/County Clerk

Dean Logan was appointed Registrar-Recorder/County Clerk for Los Angeles County, California on July 9, 2008, previously serving as the Acting Registrar-Recorder/County Clerk and as Chief Deputy. Los Angeles County, with more than 500 political districts and 4.1 million registered voters, is the largest and most complex county election jurisdiction in the country. Mr. Logan has over 20 years experience in elections administration, records management and public service. Prior to moving to Southern California, Mr. Logan served as the Director of Records, Elections and Licensing Services for King County, Washington; as State Elections Director for the Washington Secretary of State; and as the elected County Clerk and Chief Deputy County Auditor in Kitsap County, Washington. Mr. Logan serves on the Board of Directors for the California Association of Clerks and Election Officials (CACEO) and is a member of the County Recorders' Association of California (CRAC), the National Association of County Recorders, Election Officials and Clerks (NACRC), the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT) and the American Council of Young Political Leaders (ACYPL) Alumni Council. He also serves on the California Secretary of State's VoteCal Statewide Voter Registration System Advisory Committee and The Election Center's National Task Force on Education & Training and National Task Force on Election Reform. In 1999, Mr. Logan was recognized by Sprint USA and the National Association of Community Leadership with its Distinguished Leadership Award. In 2007, he served as an International Election Observer in Morocco with the National Democratic Institute.

Karin Mac Donald
Director
Statewide Database & Election Administration Research Center
University of California, Berkeley

Karin Mac Donald is the director of the Statewide Database (SWDB), the redistricting database for the State of California, and the Election Administration Research Center (EARC), located at the Institute of Governmental Studies (IGS) at the University of California, Berkeley. She works and writes in the areas of redistricting, voting rights, political demography and geography, election administration, implementation and evaluation of public administration and public policy, and California politics. She has served as a consultant to many government, news, and nonprofit organizations, and worked as a redistricting consultant for various local and regional entities, including the City of San Diego and the County of San Francisco in 2001 and 2002 respectively. In 2006 and 2007, she was the lead consultant for the U.S. Election Assistance Commission's implementation study of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) with her consulting firm Q^2 Data & Research, LLC. Her current projects include a study of the implementation of online voter registration systems in two states with the EARC. She also manages the Block Boundary Suggestion Project of the Census Redistricting Data Program for the State of California with the SWDB.

Rebecca Martinez
Madera County Clerk-Recorder

Rebecca Martinez serves the County of Madera as County Clerk-Recorder and Registrar of Voters. Madera County, one of California's smaller counties with a population of 150,887, is located just north of Fresno in central California. With over 35 years in service to the county, Ms. Martinez has held her elected position since 1990. Prior to being elected, she served in the County Clerk's office in various positions, including as

Chief Assistant County Clerk. During her terms as Clerk-Recorder, Ms. Martinez has completely automated both the Recorder and the Elections divisions of her office. Ms. Martinez was elected President of the California Association of Clerks and Election Officials in July 2008, and will serve the association in that capacity until July 2010. She also served as President of the Madera Hispanic Chamber of Commerce for the 1994 term.

Process used to develop and publish State Plan update:

On December 26, 2007, President Obama signed a federal Omnibus appropriations bill for fiscal year 2008 that included $115 million in HAVA Section 251 funding to be used by states to meet HAVA's Title III requirements, which are outlined in this State Plan update. Subsequent federal appropriations were provided in 2009 and 2010 funding bills. To be eligible for additional HAVA funding, states and territories are required to prepare a State Plan update and to follow other procedures outlined in HAVA sections 253-256.

Following a recruitment and selection process, Secretary of State Debra Bowen confirmed the appointment of the members of the State Plan update Advisory Committee described above on April 30, 2008. The process of finalizing the membership of the Advisory Committee was hampered somewhat by the decision of the State Legislature and Governor to conduct a stand-alone Presidential Primary election in California on February 5, 2008, which occupied the full attention of elections officials and other potential advisory committee members. On April 30, 2008, the appointed Advisory Committee members were provided with a thank you letter from Secretary of State Bowen; the provisions of HAVA related to adoption of a State Plan update; a sample Oath of Office; and a roster of the Advisory Committee membership. Advisory committee members were informed at that time that draft sections of the State Plan update would provided to them in the coming months for initial review and comment, and that, in recognition of the demands of the 2008 election cycle on their time, the first face-to-face meeting of the Advisory Committee would be conducted following the November 4, 2008, General election..

On July 23, 2008, Advisory Committee members were provided six draft sections of the State Plan update for initial review and comment.

On August 29, 2008, Advisory Committee members were provided four more draft sections of the State Plan update for initial review and comment.

On October 17, 2008, Advisory Committee members were provided the final four draft sections of the State Plan update for initial review and comment.

During November 2008, and following discussions with Advisory Committee members, it was determined that the first face-to-face meeting of the Advisory Committee should take place in March or April 2009, and that written comments on the draft sections of the State Plan update provided in 2008 would be submitted by Advisory Committee members to the Secretary of State by January 29, 2009, in advance of that meeting.

Between January 29, 2009 and February 25, 2009, Advisory Committee members provide written comments on the State Plan update based on members' input and input from others consulted by Advisory Committee members.

On April 15, 2009, the Advisory Committee conducted a meeting at the Secretary of State's offices at 1500 11th Street, Sacramento, CA 95814.

In recognition of an unanticipated statewide special election called by the Governor for May 19, 2009, the Advisory Committee agreed to conduct the next meeting on July 30, 2009, at the Los Angeles County Registrar of Voters offices at 12400 Imperial Highway, Norwalk, CA 90650.

On August 12, 2009, an Advisory Committee meeting was conducted via teleconference as a follow-up to items discussed at the July 30 meeting.

On December 22, 2009, Advisory Committee members were notified of a final January 27, 2010, meeting to discuss the final, edited draft of the State Plan update.

On January 27, 2010, the Advisory Committee met for the final time at the Secretary of State's offices at 1500 11th Street, Sacramento, CA 95814. During this meeting, Advisory Committee members requested until February 5, 2010, to submit additional edits to the State Plan update and until February 12, 2010, to submit a proposed addition to the State Plan.

Between February 5, 2010, and February 18, 2010, Advisory Committee members submitted the final proposed edits and additions to the State Plan update.

In recognition that preparations for the June 8, 2010, Primary election would consume the attention and resources of elections officials, the publication date of the State Plan update was set for June 10, 2010.

On June 4, 2010, a CC/ROV memo to county elections officials was sent to remind county elections officials that the final draft State Plan update would be available for public comment on June 10, 2010, for 30 days, until July 9, 2010.

On June 4, 2010, Advisory Committee members were notified via email that the final draft State Plan update would be available for public comment on June 10, 2010, for 30 days, until July 9, 2010.

On June 7, 2010, the Secretary of State mailed written notice to 50 statewide organizations considered Interested Parties that the final draft State Plan update will be available for public comment on June 10, 2010, for 30 days, until July 9, 2010.

On June 10, 2010 through July 9, 2010, a public notice was published, in the manner used for notice of public hearings, that the final draft State Plan update would be available for public comment on June 10, 2010, for 30 days, until July 9, 2010.

On June 10, 2010, the preliminary draft State Plan update was posted to the Secretary of State's website at www.sos.ca.gov/elections/hava/state-plan. An emailbox was provided for submission of public comments at havapubliccomments@sos.ca.gov. A paper copy of the plan was made available at the Secretary of State's regional office at 300 South Spring Street, Rm 12513, Los Angeles, CA 90013; and at the Secretary of State's office at 1500 11th Street, Sacramento, CA 95814.

The public comment period for the 2010 preliminary draft State Plan update closed on July 9, 2010. Four comment letters and one email were received by the deadline. A complete copy of the letters and responses to the comments are included as Attachment A to the final 2010 State Plan update submitted to the EAC on July 29, 2010.

Section 14

Required addition to State Plan regarding implementation of the Military and Overseas Voter Empowerment (MOVE) Act:

The Military and Overseas Voter Empowerment (MOVE) Act was signed into law on October 28, 2009, as part of the National Defense Authorization Act of FY 2010 (P.L. 111-84). The MOVE Act makes changes to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986, that will be in effect for the November 2010 General Election and each succeeding election for federal office. States may delegate MOVE Act responsibilities to jurisdictions within the state.

In California, counties conduct elections, including meeting the requirements of UOCAVA for registering military and overseas voters, providing election materials and ballots, and accepting and counting ballots from military and overseas voters as provided for in state and federal law.

The MOVE Act specifies that states must describe implementation of its provisions in HAVA State Plan updates, and allows for the use of HAVA funds to pay the costs of MOVE Act implementation.

A review of the MOVE Act and a cross-reference to California Elections Code requirements demonstrates that California law meets or exceeds the MOVE Act in virtually every area.

Specifically, the MOVE Act requires states to:

- Establish procedures to allow UOCAVA voters to request voter registration applications and absentee ballot applications by mail or electronically for general, special, primary, and runoff elections for federal office. The procedures must include a means for the voter to designate whether they want to receive the application by mail or electronically.

  California Elections Code section 3103.5 already allows UOCAVA voters to electronically request ballots for general elections. The MOVE Act requires county registrars of voters to extend this practice to special, primary, and runoff elections for federal office.

  The SOS has confirmed with the Federal Voting Assistance Program (FVAP) that faxing qualifies as "electronic transmission" at this time. Other acceptable means of electronic communication for making voter registration/absentee ballot applications and blank absentee ballots available to military and overseas voters include scanning and emailing the materials, and web-based methods, such as allowing voters to download applications and/or ballots directly from the Internet.

- Transmit the voter registration application or absentee ballot application based on the preference selected by the voter. If the voter does not indicate a preference, the application must be delivered by mail.

  This practice is already in place in California.

- Protect, to the extent practicable, the security of the voter registration and absentee ballot application request process, and protect the privacy of the identity and personal data of the voter who requests or is sent a voter registration application or absentee ballot application.

  This practice of maintaining the confidentiality of all voter registration and personal identification information is already in place in California.

- Designate at least one means of electronic communication for UOCAVA voters to request, and for states to send, voter registration applications, absentee ballot applications, and voting information. The designated means of electronic communication must be included on all information and instructional materials that accompany balloting materials sent to UOCAVA voters.

  California Elections Code section 3103 allows for electronic transmission of voter registration applications, absentee ballot applications, and voting information. Counties with special absentee voters already have established procedures to transmit this material to their UOCAVA voters.

- Develop procedures for transmitting blank ballots to UOCAVA voters by mail and electronically for general, special, primary, and runoff elections for federal office. The procedures must allow voters to designate whether they want to receive the blank ballot by mail or electronically. The state must transmit the ballot based on the preference selected by the voter. If the voter does not indicate a preference, the ballot must be delivered by mail.

  California Election Code section 3103(b) allows counties to provide special absentee voters with a special absentee ballot along with a list of measures and candidates that the UOCAVA voter is entitled to vote on.

- Work with local jurisdictions to develop a free access system that allows UOCAVA voters to determine whether their marked absentee ballots were received by the appropriate election official.

  Federal law requires county elections officials to maintain a similar system for people who cast provisional ballots and California Elections Code section 3017(c) requires county elections officials to provide such a system to any Californian who casts a vote-by-mail ballot. County elections officials may need to determine if their existing system(s) are used for ballots received by UOCAVA voters or whether their existing system could be modified to provide this same service to UOCAVA voters.

- Work with the Department of Defense and the Election Assistance Commission (EAC) to develop standards for reporting on the number of ballots transmitted and received and other data as the Department determines appropriate.

  The SOS will continue to work with the EAC and the FVAP regarding reporting requirements.

- Accept the special absentee ballot application as a ballot request at least for all federal elections in the calendar year in which it was submitted.

California Elections Code section 3100 exceeds the MOVE Act requirement by specifically requiring that anyone who registers as a UOCAVA voter shall remain registered for two years. Therefore, counties are still required to send special absentee ballots to all UOCAVA voters who are registered as permanent absentee voters as soon as possible on or after the 60th day prior to an election through two subsequent federal election cycles.

Three separate official communications with counties and additional follow-up confirms that all California counties are in compliance with all aspects of the MOVE Act as detailed above.

The MOVE Act became law when California was in the process of updating its State Plan. This analysis of the MOVE Act's impact on the administration of California elections demonstrates California's compliance with the Act's provisions, and also represents its implementation plan as required by the MOVE Act.

Because California currently complies with the provisions of the MOVE Act, there is no expected expenditure of HAVA Section 251 to meet these requirements.

[FR Doc. 2010–20778 Filed 8–20–10; 8:45 am]
BILLING CODE 6820–KF–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9192–2; Docket ID No. EPA–HQ–ORD–2010–0701]

Climate Change Vulnerability Assessment: Four Case Studies of Water Utility Practices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 45-day public comment period for the draft document titled, "Climate Change Vulnerability Assessment: Four Case Studies of Water Utility Practices" (EPA/600/R–10/077a). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development.

This draft report presents a series of case studies describing the approaches currently being taken by four water utilities to assess their vulnerability to future climate change. The report is intended to illustrate the types of analyses, models, and climate change information being developed and used by selected utilities that are leaders in climate adaptation to understand and respond to climate risk.

The public comment period and the external peer-review workshop, which will be scheduled at a later date and announced in the **Federal Register**, are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward the public comments that are submitted in accordance with this notice to the external peer-review panel prior to the meeting for their consideration. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

The draft document and EPA's peer-review charge are available via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.*

DATES: The 45-day public comment period begins August 23, 2010, and ends October 7, 2010. Technical comments should be in writing and must be received by EPA by October 7, 2010.

ADDRESSES: The draft "Climate Change Vulnerability Assessment: Four Case Studies of Water Utility Practices" is available primarily via the Internet on the National Center for Environmental Assessments home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, "Climate Change Vulnerability Assessment: Four Case Studies of Water Utility Practices." The EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198; facsimile: 301–604–3408; e-mail: *nscep@bps-lmit.com.* Please provide your name, your mailing address, the title, and the EPA number of the requested publication.

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Thomas Johnson, NCEA; telephone: 703–347–8618; facsimile: 703–347–8694; or e-mail: *Johnson.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

This report presents a series of case studies describing the approaches currently being taken by four water utilities in the United States to assess their vulnerability to climate change. The report is not intended to be a comprehensive listing of assessment approaches or utilities conducting vulnerability assessments. Rather, its purpose is to illustrate a range of issues and current approaches taken by selected utilities that are leaders in climate adaptation to understand and respond to climate risk. The approaches taken by the different utilities to assess their vulnerability to climate change range from sophisticated environmental modeling and scenario analysis to qualitative methods based on reviews of available literature. The case studies illustrate different approaches that reflect specific local needs and conditions, existing vulnerabilities, local partnerships, and available information about climate change. Information from these case studies will be of use to water utilities and other members of the water resources community to inform the development of strategies for understanding and responding to climate change. The issue of climate change is complex and will require ongoing attention and study.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2010–0701, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0701. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to

make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: August 13, 2010.

David Bussard,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–20838 Filed 8–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9192–1]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Clean Air Scientific Advisory Committee (CASAC) Ambient Air Methods and Monitoring Subcommittee (AAMMS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office is announcing a public teleconference on September 15, 2010, of the Clean Air Scientific Advisory Committee (CASAC) Ambient Air Monitoring & Methods Subcommittee (AAMMS or Subcommittee) to provide advice on EPA's white paper, *Approach for the Development of a New Federal Reference Method for Lead (Pb) in Total Suspended Particulates (TSP).*

DATES: The teleconference will be held on Wednesday, September 15, 2010 from 10 a.m. to 2 p.m. (Eastern Time).

ADDRESSES: The teleconference will be conducted by phone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to submit a written or brief oral statement or wants further information concerning the teleconference may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 564–2050; fax (202) 565–2098; or e-mail at *yeow.aaron@epa.gov*. General information concerning the CASAC and the CASAC documents can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act, Public Law 92–463 5 U.S.C., App. 2 (FACA), notice is hereby given that the CASAC AAMMS will hold a public meeting to provide advice on EPA's white paper, *Approach for the Development of a New Federal Reference Method for Lead (Pb) in Total Suspended Particulates (TSP).* The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC AAMMS will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including lead. In November 2008, EPA published the final rule for the NAAQS for lead (73 FR 66934), revising the primary standard from 1.5 $\mu g/m^3$ to 0.15 $\mu g/m^3$, and setting the secondary standard equal to the primary standard. The indicator for the Lead NAAQS did not change and remains as lead in total suspended particles (Pb-TSP). The Federal Reference Method (FRM) for Pb-TSP (40 CFR part 50, Appendix G) was promulgated in 1979 and is based on Flame Atomic Absorption Spectroscopy (FAAS). There is a need for a new FRM due to advances in analytical measurement technologies, such as improved analytical sensitivity, more efficient extraction methods, and new analytical instrumentation. EPA has developed the white paper, *Approach for the Development of a New Federal Reference Method (FRM) for Lead (Pb) in Total Suspended Particles (TSP),* which outlines the approach for the development a new FRM for lead. The AAMMS has been asked to provide advice on several issues in the white paper including: Extraction methods, analytical methods, validation and testing, and inter-laboratory variability.

Technical Contacts: Any technical questions concerning EPA's white paper can be directed to Ms. Joann Rice, OAQPS, at *rice.joann@epa.gov* or (919) 541–3372.

Availability of Meeting Materials: The Agency review document is posted on the EPA Technology Transfer Network Web site on the respective page for Ambient Monitoring Technology Information Center at *http://www.epa.gov/ttn/amtic/casacinf.html.* Prior to the teleconference, the agenda and other materials for the CASAC AAMMS teleconference will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via e-mail) at the contact information noted above by September 8, 2010 to be placed on the list of public speakers. *Written Statements:* Written statements should be supplied to the DFO via email at the contact information noted above by September 8, 2010 for the teleconference so that the information may be made available to the AAMMS members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. Submitters are requested to provide versions of signed documents, submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Yeow at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 16, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–20840 Filed 8–20–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OPPT–2010–0470; FRL–10–032; FRL–9191–9]

Lead-Based Paint Renovation, Repair and Painting Activities in Target Housing and Child Occupied Facilities; State of Rhode Island and State of Massachusetts. Notice of Self-Certification Program Authorization, Request for Public Comment, Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice; program authorization, request for comments and opportunity for public hearing.

SUMMARY: This notice announces that on April 20, 2010, the State of Rhode Island, and on July 9, 2010, the State of Massachusetts, were deemed authorized under section 404(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2684(a), and 40 CFR 745.324(d)(2), to administer and enforce requirements for renovation, repair and painting programs in accordance with section 402(c)(3) of TSCA, 15 U.S.C. 2682(c)(3). This notice also announces that EPA is seeking comment during a 45-day public comment period, and is providing an opportunity to request a public hearing within the first 15 days of this comment period, on whether Rhode Island's and Massachusetts's programs are at least as protective as the Federal program and provide for adequate enforcement. This notice also announces that Rhode Island's and Massachusetts's 402(c)(3) programs were deemed authorized by regulation and statute on April 20, 2010, and July 9, 2010, respectively, and will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves the Rhode Island and Massachusetts program applications on or before October 20, 2010 and January 9, 2011, respectively.

DATES: Comments, identified by docket control number, EPA–R01–OPPT–2010–0470 must be received on or before October 7, 2010. In addition, a public hearing request must be submitted on or before September 7, 2010.

ADDRESSES: Comments, and requests for a public hearing, may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Section I of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number EPA–R01–OPPT–2010–0470 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: James M. Bryson, Technical Contact, Toxics and Pesticides Unit, Office of Environmental Stewardship, Environmental Protection Agency, Region 1, 5 Post Office Square—Suite 100, OES 05–4, Boston, MA 02109, telephone number: (617) 918–1524; e-mail address: *bryson.jamesm@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general, to entities offering Lead Safe Renovation courses, and to firms and individuals engaged in renovation and remodeling activities of pre-1978 housing in the State of Rhode Island and the State of Massachusetts, individuals and firms falling under the North American Industrial Classification System (NAICS) codes 231118, 238210, 238220, 238320, 531120, 531210, 53131, e.g., General Building Contractors/ Operative Builders, Renovation Firms, Individual Contractors, and Special Trade Contractors like Carpenters, Painters, Drywall Workers and Plumbers, "Home Improvement" Contractors, as well as Property Management Firms and some Landlords, who are also affected by these rules. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this notice could also be affected. The NAICS codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically:* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/.* To access this document, select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register-Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.regulations.gov.*

2. *In person:* You may read this document, and certain other related

documents, by visiting Rhode Island Department of Health, 3 Capitol Hill-Room 206, Providence, RI 02908–5097; contact person, Robert Vanderslice, telephone number (401) 222–7766 or in Massachusetts, the Department of Labor, Division of Occupational Safety, 1001 Watertown Street, Newton, MA 02465; contact persons, Patricia Sutliff and Frank Kramarz, telephone number (617) 969–7177. You may also read this document, and certain other related documents, by visiting the Environmental Protection Agency, Region 1 Library, 5 Post Office Sq., Boston, MA 02109. You should arrange your visit to the EPA office by contacting the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Also, EPA has established an official record for this action under docket control number EPA–R01–OPPT–2010–0470. The official record consists of the documents specifically refereuced in this action, this notice, the State of Rhode Island and State of Massachusetts 402(c)(3) program authorization applications, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI).

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number EPA–R01–OPPT–2010–0470 in the subject line on the first page of your response.

1. *By mail or in person or by courier:* Submit or deliver your comments and public hearing requests to: James M. Bryson, EPA Region 1. The Regional office is open from 9 a.m. to 5 p.m., Monday through Friday, excluding legal holidays.

2. *Electronically:* You may submit your comments and public hearing requests electronically by e-mail to: *bryson.jamesm@epa.gov* or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in Microsoft Word or ASCII file format.

D. How Should I Handle CBI Information That I Want To Submit to the Agency?

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark on each page the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM that you mail to EPA as CBI, and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action Is the Agency Taking?

EPA is announcing that on April 20, 2010, the State of Rhode Island, and on July 9, 2010, the State of Massachusetts, were deemed authorized under section 404(a) of TSCA, and 40 CFR 745.324(d)(2), to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA. This notice also announces that EPA is seeking comment and providing an opportunity to request a public hearing on whether these State programs are at least as protective as the Federal program and provide for adequate enforcement. The 402(c)(3) program ensures that training providers are accredited to teach renovation classes, that individuals performing renovation activities are properly trained and certified as renovators, that firms are certified as renovation firms, and that specific work practices are followed during renovation activities. On April 20, 2010, Rhode Island and on July 9, 2010, the State of Massachusetts submitted applications under section 404 of TSCA requesting authorization to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, and submitted a self-certification that their respective program is at least as protective as the Federal program and provides for adequate enforcement. Therefore, pursuant to section 404(a) of TSCA, and 40 CFR 745.324(d)(2), the Rhode Island and Massachusetts renovation programs were deemed authorized as of the date of submission and until such time as the Agency disapproves the program application or withdraws program authorization. Pursuant to section 404(b) of TSCA and 40 CFR 745.324(e)(2), EPA is providing notice, opportunity for public comment and opportunity for a public hearing on whether the State program application is at least as protective as the Federal program and provides for adequate enforcement. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time and place of the hearing. The authorization of the Rhode Island and Massachusetts 402(c)(3) programs, which were deemed authorized by regulation and statute on April 20, 2010 and July 9, 2010, respectively, will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves the program applications on or before October 30, 2010 for Rhode Island and January 9, 2011 for Massachusetts.

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

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), entitled Lead Exposure Reduction. In the **Federal Register** dated April 22, 2008, (73 FR 21692), EPA promulgated final TSCA section 402(c)(3) regulations governing renovation activities. The regulations require that in order to do renovation activities for compensation, renovators must first be properly trained and certified, must be associated with a certified renovation firm, and must follow specific work practice standards, including recordkeeping requirements. In addition, the rule prescribes requirements for the training and certification of dust sampling technicians. EPA believes that regulation of renovation activities will help to reduce the exposures that cause serious lead poisonings, especially in children under age 6, who are particularly susceptible to the hazards of lead.

Under section 404 of TSCA, a state may seek authorization from EPA to administer and enforce its own renovation, repair and painting program in lieu of the Federal program. The regulation governing the authorization of a State program under section 402 of

TSCA is codified at 40 CFR part 745, subpart Q. States that choose to apply for program authorization must submit a complete application to the appropriate regional EPA office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a state must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement, as required by section 404(b) of TSCA. EPA's regulations at 40 CFR part 745, subpart Q provide the detailed requirements a State program must meet in order to obtain EPA approval. A state may choose to certify that its own renovation, repair and painting program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program is at least as protective of human health and the environment as the Federal program and provides for adequate enforcement. Upon submission of such a certification letter the program is deemed authorized pursuant to TSCA section 404(a) and 40 CFR 745.324(d)(2). This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summaries

The following program summary is from Rhode Island's self-certification application:

Program Summary; State of Rhode Island; Renovation, Repair, and Painting Program/Lead-Safe Renovator Certification Program

The state of Rhode Island is submitting an application to the U.S. Environmental Protection Agency (EPA) certifying that the state's Renovation, Repair, and Painting Program/Lead-Safe Renovator Program is as protective as the EPA program and is authorized when the application is submitted to EPA. The Rhode Island Department of Health (HEALTH) is the lead agency for these programs. HEALTH currently has EPA-authorized programs for lead-based paint activities training and certification and pre-renovation notification.

The rules for the Renovation, Repair, and Painting Program/Lead-Safe Renovator Program are found in R23–24.6–PB–Section 14.0 of the *Rhode Island Rules and Regulations For Lead Poisoning Prevention*. The amendments to this regulation that contain these requirements are effective on March 30, 2010. These rules already cover all lead-based paint activities that are conducted in target housing and child-occupied facilities:

1. Establish the licensing of lead hazard control firms, effective May 1, 2010.

2. Establish work practice requirements for renovation.

3. Establish licensing requirements for persons and firms that conduct these activities. To be licensed, persons must complete an approved training program, apply for licensure, and pay a fee of $40. Firms must employ at least one licensed lead-safe remodeler/renovator, must apply for licensure and pay a fee of $40.

4. Establish procedures for the suspension, revocation, or modification of certifications.

5. Establish requirements for the approval of lead-safe renovator training programs and procedures for the suspension, revocation, or modification of training program approvals.

6. Define violations of these rules, establish procedures to assess penalties for violations of these rules, and establish administrative procedures for persons or firms to appeal these penalties.

The legal authority for the renovation, repair, and painting program/lead-safe renovator certification is found in Chapters 23–24.6.6 and 42–35 of the Rhode Island General Laws, as amended.

The following program summary is from the Massachusetts self-certification application:

Program Summary; State of Massachusetts; Renovation, Repair, and Painting Program/Lead-Safe Renovator Certification Program

The State of Massachusetts is submitting an application to the U.S. Environmental Protection Agency (EPA) certifying that the state's Renovation, Repair, and Painting Program/Lead-Safe Renovator Program is as protective as the EPA program and is authorized when the application is submitted to EPA. The Massachusetts Department of Labor, Division of Occupational Safety (MADOS), is the lead agency for these programs. MADOS currently has an EPA-authorized program for lead-based paint activities training and certification.

The rules for the Renovation, Repair, and Painting Program/Lead-Safe Renovator Program are found in 454 CMR 22.00, Deleading And Lead-Safe Regulations of the State of Massachusetts and are promulgated in accordance with and under the authority of M.G.L. c. 111, sections 189A through 199B and M.G.L. c. 149, section 6. The amendments to this regulation that contain these requirements are effective on July 9, 2010. These rules cover all renovation, repair and painting activities that are conducted in target housing and child-occupied facilities. These rules:

1. Establish the discipline of lead-safe renovator.

2. Establish work practice requirements for renovation.

3. Require firms and other entities who carry out the work to be licensed as Lead-Safe Renovation Contractors and that the work be overseen at all times by Certified Lead-Safe Renovator-Supervisors. To be certified, persons must complete an approved training program. Firms must employ at least one certified lead-safe renovator, must apply for licensing and pay a fee of $375.

4. Establish procedures for the suspension, revocation, or modification of licenses and certifications.

5. Establish requirements for the approval of lead-safe renovator training programs and procedures for the suspension, revocation, or modification of training program approvals.

6. Define violations of these rules, establish procedures to assess penalties for violations of these rules, and establish administrative procedures for persons or firms to appeal these penalties.

The renovation, repair, and painting program/lead-safe renovator provisions found in 454 CMR 22.00 are promulgated in accordance with and under the authority of M.G.L. c. 111, section 189A through 199B and M.G.L. c. 149, section 6.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved state program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized state program.

V. Withdrawal of Authorization

Pursuant to section 404(c) of TSCA, the EPA Administrator may withdraw authorization of a state or Indian Tribal renovation, repair and painting program, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

List of Subjects

Environmental protection, Hazardous substances, Lead, Renovation, Renovation work practice standards, Renovation training, Renovation certification, Renovation notification, Reporting and recordkeeping requirements, State of Rhode Island, State of Massachusetts.

Dated: August 16, 2010.

Ira W. Leighton,

Deputy Regional Administrator, Region 1.

[FR Doc. 2010–20846 Filed 8–20–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 16, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 22, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0999.

Title: Hearing Aid Compatibility Status Report and Section 20.19, Hearing Aid–Compatible Mobile Handsets (Hearing Aid Compatibility Act of 1988).

Form No.: FCC Form 655 – electronic only.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents and Responses: 925 respondents; 925 responses.

Estimated Time Per Response: 1 – 2.5 hours.

Frequency of Response: Annual and on occasion reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154(i), 157, 201, 202, 208, 214, 301, 303, 308, 309(j), 310 and 610.

Total Annual Burden: 12,063 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Information in the reports may include confidential information. However, covered entities would be allowed to request that such materials submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is requesting OMB approval of a revision to this currently approved collection regarding hearing aid compatibility disclosure requirements. In the Report and Order in WT Docket No. 01–309, FCC 03–168, adopted and released in September 2003, the Federal Communications Commission modified the exemption for telephone used with public mobile services from the requirements of the Hearing Aid Compatibility Act of 1988 (HAC Act). The Order required digital wireless phone manufacturers and service providers to make certain digital wireless phones capable of effective use with hearing aids, label certain phones they sold with information about their compatibility with hearing aids, and report to the Commission (at first every six months, then on an annual basis) on the numbers and types of hearing aid–compatible phones they were producing or offering to the public.

In February 2008, the Commission adopted final rules in the Report and Order (FCC 08–68) that updated several performance benchmarks and instituted new requirements. To assist the Commission in monitoring the implementation of the new requirements and to provide information to the public, the Report and Order also required manufacturers and service providers to continue to file annual reports on the status of their compliance with the requirements, and required manufacturers and service providers that maintain public websites to publish up–to–date information on those websites regarding their hearing–aid compatible handset models. The existing, OMB–approved collection under this OMB control number supports these disclosure requirements.

Recently, on August 5, 2010, the Commission adopted final rules in a Second Report and Order, FCC 10–145, that, among other things, updated disclosure requirements for manufacturers and service providers. As a result, the Commission is requesting a revision of this collection due to the change in language required for disclosures under Section 20.19(f)(2) of the Commission's rules and the addition of content to be disclosed for certain headsets under Section 20.19(f)(2) of the Commission's rules. The updated requirements will create no additional burden for manufacturers and service providers, but will ensure that consumers are provided with consistent and sufficient information about the functionality and the limitations of their handsets. These actions are taken to ensure that consumers who use hearing aids and cochlear implants have access to a variety of phones and are adequately informed about the functionality and the limitations of the handsets, while preserving competitive opportunities for small companies as well as opportunities for innovation and investment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–20759 Filed 8–20–10 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 10–162; DA 10–1325]

The Consumer and Governmental Affairs Bureau Seeks Comment on the Commission's Policies and Practices To Ensure Compliance With Section 504 of the Rehabilitation Act of 1973

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau (Bureau), initiates a review of the Commission's policies and practices under Section 504 of the Rehabilitation Act of 1973 (Section 504). Section 504 requires Federal agencies to make their programs and activities accessible to people with disabilities. This document seeks comment on the accessibility of the Commission's programs and activities.

DATES: Comments are due on or before September 20, 2010.

ADDRESSES: You may submit comments identified by [CG Docket No. 10–162], and by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): *http://www.fcc.gov/cgb/ecfs/*, or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS Filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket, which in this instance is CG Docket No. 10–162.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.
- Pursuant to 47 CFR 1.1810(b): "Written comments shall be signed by the commenter or by someone authorized to do so on his or her behalf. The signature of the commenter, or signature of someone authorized by the commenter to do so on his or her behalf, shall be provided on print comments. Comments in audio, Braille, electronic, and/or video formats shall contain an affirmative identity statement of the individual, which for this purpose shall be considered to be functionally equivalent to a commenter's signature."

FOR FURTHER INFORMATION CONTACT: Pam Gregory, Consumer and Governmental Affairs Bureau, Consumer Affairs and Outreach Division, at (202) 418–2498 (voice), (202) 418–1169 (TTY), or e-mail at *Pam.Gregory@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 10–1325, released July 19, 2010 in CG Docket No. 10–162. The full text of DA 10–1325 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS (insert [CG Docket No. 10–162] into the Proceeding block) and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or via its Web site, *http://www.bcpiweb.com*. DA 10–1325 can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/section_504.html*.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (tty).

Synopsis

In document DA 10–1325, the Bureau initiates a review of the Commission's policies and practices under Section 504. Section 504 requires Federal agencies to make their programs and activities accessible to people with disabilities.

The Commission's rules mandate that it conduct a review of its current Section 504 policies and practices in view of advances in relevant technology and achievability, and that it update its *Section 504 Handbook* every three years. The *Section 504 Handbook* contains accessibility procedures and guidelines for releasing documents, holding meetings, receiving comments, and other aspects of Commission programs and activities, and is available in Word, PDF, Text, HTML and Braille at *http://www.fcc.gov/cgb/dro/section_504.html*. The Bureau seeks comment on the overall accessibility of the Commission's activities and programs. This includes, but is not limited to, the availability of sign language interpreters, physically accessible buildings and meeting spaces, Braille documents, assistive listening devices, Communication Access Realtime Translation (CART), captioning, and other forms of reasonable accommodation needed for access to Commission programs and activities.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission.

[FR Doc. 2010–20909 Filed 8–20–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: BRYAN BROADCASTING CORPORATION, Station KWBC, Facility ID 40912, BP–20100712ABU, From NAVASOTA, TX, To COLLEGE STATION, TX; CUMULUS LICENSING LLC, Station KNRQ–FM, Facility ID 12501, BMPH–20100805AKO, From TUALATIN, OR, To ALOHA, OR; IORIO BROADCASTING, INC., Station WNAE–FM, Facility ID 164188, BPH–20100728ABK, From CLARENDON, PA, To WATTSBURG, PA; LIFELINE MINISTRIES, INC., Station WGTI, Facility ID 173, BPH–20100804AAU, From DUCK, NC, To WINFALL, NC; LIGHT OF LIFE COMMUNITY, INC., Station WLOL–FM, Facility ID 172639, BMPED–20100722BOH, From MORGANTOWN, WV, To STAR CITY, WV.

DATES: Comments may be filed through October 22, 2010.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm*. A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2010–20912 Filed 8–20–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.*, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the PRA. On June 16, 2010 (75 FR 34137), the FDIC solicited public comment for a 60-day period on renewal of the following three information collections: Quarterly Certified Statements Invoice (OMB No. 3064–0057); Student Educational Employment Program (OMB No. 3064–0147); and Complex Structured Finance Transactions (OMB No. 3064–0148). No comments were received. Therefore, the FDIC hereby gives notice of submission of its requests for renewal to OMB for review.

DATES: Comments must be submitted on or before September 22, 2010.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently approved collections of information:*

1. *Title:* Quarterly Certified Statements Invoice (formerly known as Certified Statement for Deposit Insurance Assessment).

OMB Number: 3064–0057.

Affected Public: Insured financial institutions.

Estimated Number of Respondents: 7,966.

Estimated Time per Response: 20 minutes.

Frequency of Response: Quarterly.

Total Annual Burden: 10,621 hours.

General Description of Collection: The FDIC collects deposit insurance assessments quarterly by means of direct debits through the automated Clearing House network.

2. *Title:* Student Educational Employment Program.

OMB Number: 3064–0147.

Affected Public: Students seeking employment with the FDIC.

Estimated Number of Responses: 700.

Estimated Time per Response: 20 minutes.

Frequency of Response: On occasion.

Total Annual Burden: 234 hours.

General Description of Collection: The application form used in this collection ensures that students seeking employment with FDIC as participants in either one of the two components of the Student Educational Employment Program (i.e., the Student Temporary Employment Program (STEP) or the Student Career Experience Program (SCEP)) meet the government-wide eligibility criteria established by the Office of Personnel Management as well as the internal eligibility criteria established by the FDIC. The information collected will include information on the applicant's coursework, grade point averages, and relationship to any FDIC employee.

3. *Title:* Complex Structured Finance Transactions.

OMB Number: 3064–0148.

Affected Public: State nonmember banks actively involved in complex structured finance transactions.

Estimated Number of Responses: 5.

Estimated Time per Response: 25 hours.

Frequency of Response: On occasion.

Total Annual Burden: 125 hours.

General Description of Collection: Institutions verify and update their policies and procedures regarding complex structured finance transactions periodically to ensure that they are adequate and current.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 17th day of August, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–20792 Filed 8–20–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: August 16, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10277	Palos Bank and Trust Company	Palos Heights	IL	8/13/2010

[FR Doc. 2010–20781 Filed 8–20–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 7, 2010.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. The Bagge Family Bank Stock Trust of 2010, Claire J. and John F. Bagge, Trustees, Sunland, California, individually, and as part of a group acting in concert with Henry J. and Sandra M. Bagge, Merrimack, New Hampshire; Hope Bagge and Jay Bagge, both of Castaic, California; James F. Bagge, Justin F. Bagge, and Joshua F. Bagge, all of Shadow Hills, California; to retain control of Mission Valley Bancorp, and thereby indirectly retain control of Mission Valley Bank, both of Sunland, California.

Board of Governors of the Federal Reserve System, August 18, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–20809 Filed 8–20–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Country Bancshares, Inc., Jamesport, Missouri; to retain 13.06 percent of the voting shares of Liberty First Bancshares, Inc., and thereby indirectly retain voting shares of Patriots Bank, both in Liberty, Missouri.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Steele Holdings, Inc., Tyler, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of American State Bank, Arp, Texas.

Board of Governors of the Federal Reserve System, August 17, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–20747 Filed 8–20–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Evaluation of the Health Effects of Low-Level Lead Exposure: Call for Information and Nomination of Scientific Experts

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH), HHS.

ACTION: Call for information and nomination of scientific experts.

SUMMARY: CERHR is evaluating the scientific evidence regarding the potential health effects associated with low-level lead exposure (defined as having blood lead levels < 10 µg/dL). CERHR invites the submission of information about ongoing studies or upcoming publications on the health effects of low-level lead exposure that might be considered for inclusion in the evaluation. CERHR also invites the nomination of scientific experts to potentially serve as technical advisors in conducting the evaluation or as members of an *ad hoc* expert panel to be convened to peer review the draft NTP Monograph on Low-level Lead (*see* **SUPPLEMENTARY INFORMATION** below). This expert panel peer review meeting is tentatively scheduled for Spring 2011. When set, the date and location of the meeting will be announced in the **Federal Register** and posted on the CERHR Web site (*http://cerhr.niehs.nih.gov*). CERHR expert panel peer review meetings are open to the public with time scheduled for oral public comment.

DATES: All information and nominations should be received by CERHR by October 7, 2010.

ADDRESSES: Information may be submitted to Dr. Andrew A. Rooney, NTP/CERHR, NIEHS, P.O. Box 12233, MD K2–04, Research Triangle Park, NC 27709 (mail), 919–316–4704 (telephone), or *rooneyaa@niehs.nih.gov* (e-mail). Courier address: NIEHS, 530 Davis Drive, Room K2163, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

The main uses of lead are in manufacture of storage batteries, ammunition, nuclear and x-ray shielding devices, cable coverings, pipes, and solders. Lead may be present in paint pigments, ceramics, caulk, plastics, and electronic devices. Exposure to the general population can occur through inhalation of lead in dust and industrial emissions, intake of lead in drinking water, consumption of contaminated food, ingestion of lead dust, eating of paint flakes by children, occupational exposure, and secondary exposure in families of workers exposed occupationally to lead. Lead exposure remains a significant health concern despite policies and practices that have resulted in continued progress in reducing exposures and lowering blood lead levels in the U.S. population. CERHR selected low-level lead for evaluation because of: (1) Widespread human exposure, (2) published studies on health effects associated with low blood lead levels (< 10 µg/dL) in humans, and (3) public concern. An evaluation of low-level lead was initially discussed by the NTP Board of Scientific Counselors (BSC) on December 6, 2007 (72 FR 58854) and the approach for the evaluation was discussed at the May 10, 2010 BSC meeting (75 FR 12244). BSC meeting minutes are available at *http://ntp.niehs.nih.gov/go/9741*.

Request for Information

CERHR invites the public and other interested parties to submit information on low-level lead including toxicology information from completed and ongoing studies, information on planned studies, and information about current production levels, human exposure, use patterns, and environmental occurrence. This information will be considered in evaluating the potential health effects of exposure to low-level lead. Information should be submitted to CERHR (*see* **ADDRESSES**).

Request for Nomination of Scientific Experts

CERHR invites nominations of qualified scientists to serve as technical advisors and/or as members of an *ad hoc* expert panel to peer review the draft NTP Monograph on Low-level Lead. Scientists serving as technical advisors or on the peer review panel should represent a wide range of expertise including, but not limited to, developmental toxicology, neurotoxicology, reproductive toxicology, cardiovascular toxicology, renal toxicology, immunotoxicology, epidemiology, general toxicology, medicine, pharmacokinetics, exposure assessment, and biostatistics. Technical advisors and expert panel members should meet criteria to serve as an expert including, but not limited to, formal academic training and experience in a relevant scientific field, publications in peer-reviewed journals, and membership in relevant professional societies. Nominations should include contact information and current *curriculum vitae* (if possible) and be forwarded to CERHR (*see* **ADDRESSES**). Final selection of individuals to serve on the peer review panel will be made in accordance with the Federal Advisory Committee Act and Department of Health and Human Services implementing regulations. All technical advisors and panel members serve as individual experts and not as representatives of their employers or other organizations.

Background Information on CERHR

The NTP established CERHR in 1998 (63 FR 68782). CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. CERHR publishes monographs that assess the evidence regarding whether environmental chemicals, physical substances, or mixtures (collectively referred to as "substances") cause adverse effects on reproduction and/or development and provide opinion on whether these substances are hazardous for humans. Information about CERHR can be obtained from its homepage (*http://cerhr.niehs.nih.gov*).

Dated: August 12, 2010.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2010–20865 Filed 8–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the Norton Company, Worcester, MA, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the Norton Company, Worcester, Massachusetts, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as

warranted by the evaluation, is as follows:

Facility: Norton Company.

Location: Worcester, Massachusetts.

Job Titles and/or Job Duties: All employees who worked in any building or area.

Period of Employment: January 1, 1960 through December 31, 1972.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–20900 Filed 8–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the De Soto Avenue Facility in Los Angeles County, California, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 14, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the De Soto Avenue Facility in Los Angeles County, California, from January 1, 1959 through December 31, 1964, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on August 13, 2010, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on August 13, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–20898 Filed 8–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Downey Facility in Los Angeles County, California, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 13, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Downey Facility in Los Angeles County, California from January 1, 1948 through December 31, 1955, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on August 12, 2010, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on August 12, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–20896 Filed 8–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Mound Plant in Miamisburg, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 14, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy (DOE), its predecessor agencies, and its contractors and subcontractors who had at least one tritium bioassay sample and worked at the Mound Plant in Miamisburg, Ohio from March 1, 1959 through March 5, 1980, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on August 13, 2010, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on August 13, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone

877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–20894 Filed 8–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the St. Louis Airport Storage Site in St. Louis, Missouri, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 14, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked in any area and in any job capacity at the St. Louis Airport Storage Site in St. Louis, Missouri from January 3, 1947 through November 2, 1971, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more of the other classes of employees in the Special Exposure Cohort.

This designation became effective on August 13, 2010, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on August 13, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–20891 Filed 8–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Bethlehem Steel Corporation facility in Lackawanna, New York, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 14, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at the Bethlehem Steel Corporation facility in Lackawanna, New York from January 1, 1949 to December 31, 1952, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on August 13, 2010, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on August 13, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–20888 Filed 8–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from BWX Technologies, Inc., in Lynchburg, Virginia, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 13, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employer employees who worked at BWX Technologies, Inc., in Lynchburg, Virginia from January 1, 1959 through December 31, 1959; and/or from January 1, 1968 through December 31, 1972, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on August 12, 2010, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on August 12, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support. National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can

also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–20886 Filed 8–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Los Alamos National Laboratory in Los Alamos, New Mexico, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 13, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Los Alamos National Laboratory in Los Alamos, New Mexico from March 15, 1943 through December 31, 1975, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on August 12, 2010, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on August 12, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–20885 Filed 8–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the University of Rochester Atomic Energy Project in Rochester, New York, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On July 13, 2010, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at the University of Rochester Atomic Energy Project in Rochester, New York, from September 1, 1943 through October 30, 1971, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation became effective on August 12, 2010, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on August 12, 2010, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–20884 Filed 8–20–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Standards Committee's Workgroups: Clinical Operations Vocabulary, Clinical Quality, Implementation, and Privacy & Security workgroups.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The HIT Standards Committee Workgroups will hold the following public meetings during September 2010: September 1 and 2, Vocabulary Task Force hearing; and September 15, Implementation Workgroup, 12 p.m. to 2 p.m./ET.

Location: All workgroup meetings will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web. Please check the ONC Web site for additional information as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last-minute modifications that affect a previously announced advisory

committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.*, clinical operations vocabulary standards, clinical quality measure, implementation opportunities and challenges, and privacy and security standards activities. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: August 16, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–20825 Filed 8–20–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Tiger Team, Enrollment, Governance, Adoption/Certification, and Information Exchange workgroups.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The HIT Policy Committee Workgroups will hold the following public meetings during September 2010: September 3rd Governance Workgroup, 1 p.m. to 3:30 p.m./ET; September 10th Enrollment Workgroup, 11 a.m. to 2 p.m./ET; September 22nd Meaningful Use Workgroup, 9 a.m. to 3:30 p.m./ET; September 24th Enrollment Workgroup, 10 a.m. to 3 p.m./ET; and September 28th Governance Workgroup, 10 a.m. to 4 p.m./ET.

Location: All workgroup meetings will be available via Webcast; for instructions on how to listen via telephone or Web visit *http://healthit.hhs.gov*. Please check the ONC Web site for additional information or revised schedules as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.*, meaningful use, information exchange, privacy and security, enrollment, governance, or adoption/certification. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: August 16, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–20826 Filed 8–20–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health

information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on September 14, 2010, from 10 a.m. to 4 p.m./Eastern Time.

Location: To be determined. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov*.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, email: *judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Certification/Adoption Workgroup, the Information Exchange Workgroup, the Enrollment Workgroup, and the Governance Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 8, 2010. Oral comments from the public will be scheduled between approximately 3 p.m. to 4 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: August 16, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–20828 Filed 8–20–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on September 14, 2010, from 10 a.m. to 4 p.m./Eastern Time.

Location: To be determined. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov*.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Certification/Adoption Workgroup, the Information Exchange Workgroup, the Enrollment Workgroup, and the Governance Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at *http://healthit.hhs.gov*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 8, 2010. Oral comments from the public will be scheduled between approximately 3 p.m. to 4 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability. please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: August 16, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–20829 Filed 8–20–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Projects of National Significance—Family Support 360.

OMB No.: New Collection.

Description: The Administration on Developmental Disabilities (ADD), part of the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), is funding a major Project of National Significance called Family Support 360 (FS 360). As with any program of Federal assistance to the States, it is in the public interest to determine the extent to which it has the desired impacts. To do this job with scientific rigor, it will be necessary to collect high quality survey data from the participants in the 17 funded programs across the nation.

ADD has already designed the instruments, methodologies, procedures, and analytical techniques for this task. Moreover, they have been pilot tested in 11 States. The tools and techniques were submitted for review, and were approved, by Institutional Review Boards for the Protection of Human Subjects (IRB) in those States in which IRB approval was necessary. The tools and techniques were repeatedly revised and improved, then applied successfully, and now they are ready to apply across the nation as soon as Office of Management and Budget (OMB) approval is received.

These instruments and methods are all aimed to answer the elementary scientific outcome questions: Are the participants in the FS 360 programs "better off" because of their participation? If so, how much, in what way(s), and at what public cost?

This information will inform public policy regarding the best methods to deliver important supports to families of people with developmental disabilities.

Respondents: The respondents are the families of and individuals with developmental disabilities who participate in the ADD Family Supports 360 grant programs at 17 sites across the nation. Ten of the sites are focused on military families, and the other seven are focused on civilian families. Each year will consist of a pre and post assessment. For each year we project 680 participating families. Of them we estimate interviews will be completed with 510 or 75 percent (some families may not give informed consent or may miss the appointment for interviews).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
The survey instrument is called the Impact Assessment for Family Support 360 Participants. It does not have a common acronym or ACF report number. It is a very brief two page protocol derived from twenty years of quality of life research in the developmental disabilities field	680	1	1.50	1,020

Estimated Total Annual Burden Hours: 1,020

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 18, 2010

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–20800 Filed 8–20–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps Loan Repayment Program (OMB No. 0915–0127)—Extension

The National Health Service Corps (NHSC) Loan Repayment Program (LRP) was established to assure an adequate supply of trained primary care health care professionals to provide services in the neediest Health Professional Shortage Areas (HPSAs) of the United States. Under this program, the Department of Health and Human Services agrees to repay the educational loans of the primary care health

professionals. In return, the health professionals agree to serve for a specified period of time in a federally designated HPSA approved by the Secretary for LRP participants. The NHSC LRP forms collect information that is needed for selecting participants and repaying qualifying loans for education. The LRP forms include the following: The NHSC LRP Application, the Loan Information and Verification form, the Employment Verification and Community Site Information form, the Payment Information Form, the Authorization to Release Information form and the Self-Certification Form. Once health professionals complete NHSC service basic contact information such as name, phone number, e-mail address, State (of residence and/or employment), discipline and specialty will be collected and maintained in a database to enable HRSA to communicate with NHSC alumni.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
NHSC LRP Application	5,175	1	5,175	.30	1,553
Payment Information Form	5,175	1	5,175	.20	1,035
Employment Verification and Community Site Information Form	5,175	1	5,175	.75	3,881
Loan Information and Verification Form	5,175	3	15,525	.30	4,658
Authorization to Release Information	5,175	1	5,175	.10	518
Self-Certification Form	5,175	1	5,175	.10	518
NHSC Alumni Database	5,000	1	5,000	.20	1,000
Total			46,400		13,163

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the OMB desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the OMB desk officer for HRSA."

Dated: August 16, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–20763 Filed 8–20–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Mentoring Children of Prisoners Data Collection Process (MCPDCP).

OMB No.: 0970–0266.

Description: Information from the Mentoring Children of Prisoners Data Collection Process is necessary for the Federal agency's reporting and planning under the Government Performance and Results Act and to support evaluation requirements in the statute. The data will be used for accountability monitoring, management improvement, and research. Acquisition of the data ensures that the Federal agency knows if Grantees are meeting the targets (number of children being mentored) recorded in the grant application as required by the statute, and that mentoring activities are faithful to characteristics established by research as essential to success. The data also support grantees as they carry out ongoing responsibilities, maintain program service and manage information for internal uses.

Respondents: Recipients of grants from the HHS/ACF/Family and Youth Services Bureau to operate programs to provide mentoring for children of prisoners.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
MCP Data Collection Process (MCPDCP)	150	4	12	7,200
Estimated Total Annual Burden Hours:				7,200

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@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: 202–395–7285.

E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV.*

Attn: Desk Officer for the Administration for Children and Families.

Dated: August 18, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–20832 Filed 8–20–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Transforming Growth Factor Beta-1 (TGF-β1) Transgenic Mouse Model

Description of Technology: Transforming Growth Factor-β1 (TGF-β1) is a multifunctional cytokine that is involved in many physiological processes such as immune regulation, cell proliferation, angiogenesis, apoptosis, and extracellular matrix deposition. Overexpression of activated TGF-β1 signaling pathway is known to play a role in many disease processes, such as inflammation, fibrosis and tumor metastasis.

NIH inventors have developed a transgenic mouse model, designated $\beta1^{glo}$, which permits conditional, gene-specific overexpression of TGF-β1. The model features a TGF-β1 transgene for which expression is blocked by a floxed enhanced green fluorescent protein (EGFP) gene downstream of the promoter. Excision of the EGFP gene by Cre recombinase allows expression of TGF-β1. Thus, these mice may be cross-bred with a variety of Cre transgenic mouse lines in order to study the role of TGF-β1 in targeted organ systems and tissues.

Inventors: Ashok B. Kulkarni and Bradford E. Hall (NIDCR).

Publication: BE Hall, C Zheng, WD Swaim, A Cho, CN Nagineni, MA Eckhaus, KC Flanders, IS Ambudkar, BJ Baum, AB Kulkarni. Conditional overexpression of TGF-beta1 disrupts mouse salivary gland development and function. Lab Invest. 2010 Apr;90(4):543–555. [PubMed: 20142803].

Patent Status: HHS Reference No. E–016–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License.

Licensing Contact: Tara Kirby, PhD; 301–435–4426; *tk200h@nih.gov*.

A Fertility Test To Detect Ovarian Autoimmune Disease Using Human Recombinant MATER Protein

Description of Technology: The inventors have identified *MATER*, a gene that plays an important role in fertility, and have shown that antibodies against MATER protein are detected at higher frequencies in women experiencing infertility and irregular menstrual periods than in healthy women. The discovery of MATER as an important factor in autoimmune-mediated ovarian dysfunction will facilitate diagnosis and treatment of these disorders. In addition to its critical role in ovarian autoimmunity, the inventors have also discovered that the *MATER* gene plays an essential role in embryonic development.

The invention discloses the *MATER* gene, MATER protein and MATER-specific antibodies. Also disclosed are methods and kits for evaluating female infertility through detection of an abnormal autoimmune response, an abnormal *MATER* gene, or abnormal MATER protein expression.

Applications

- Diagnostic test for women suffering from infertility or irregular menstrual periods.
- Tool for the study of early embryonic development.
- Tool for the development of MATER-based contraceptives.

Development Status: Established research test, ready for additional clinical research and commercial development.

Market: Approximately 10% of women of reproductive age experience infertility, and approximately 5% per year experience menstrual irregularity.

Inventors: Lawrence M. Nelson and Zhi-bin Tong (NICHD).

Publications

1. Zhi-Bin Tong *et al.* A mouse gene encoding an oocyte antigen associated with autoimmune premature ovarian failure. Endocrinology. 1999 Aug;140(8):3720–3726. [PubMed: 10433232].

2. Zhi-Bin Tong *et al.* Developmental expression and subcellular localization of mouse MATER, an oocyte-specific protein essential for early development. Endocrinology. 2004 Mar;145(3):1427–1434. [PubMed: 14670992].

3. Zhi-Bin Tong *et al.* A human homologue of mouse Mater, a maternal effect gene essential for early embryonic development. Hum Reprod. 2002 Apr; 17(4):903–911. [PubMed: 11925379].

4. Zhi-Bin Tong *et al.* Mater, a maternal effect gene required for early embryonic development in mice. Nat Genet. 2000 Nov;26(3):267–268. [PubMed: 11062459].

Patent Status

- U.S. Patent 7,217,811 issued 15 May 2007 (HHS Reference No. E–239–2000/0–US–03).
- U.S. Patent 7,531,635 issued 12 May 2009 (HHS Reference No. E–239–2000/0–US–08).
- U.S. Patent 7,432,067 issued 07 Oct 2008 (HHS Reference No. E–239–2000/0–US–09).
- U.S. Patent 7,189,812 issued 13 Mar 2007 (HHS Reference No. E–239–2000/1–US–02).
- Foreign counterparts issued/pending in Australia, Canada, Europe, and Japan.

Licensing Status: Available for licensing.

Licensing Contact: Tara Kirby, PhD; 301–435–4427; *tk200h@nih.gov*.

Dated: August 17, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–20863 Filed 8–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent

applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Matrix Metalloproteinase-9 Blade-1 Region Peptides: Use as Cell Migration Modulators

Description of Technology: Matrix metalloproteinase-9 (MMP–9) is an enzyme integrally involved in many normal physiological processes that require degradation and remodeling of the extracellular matrix, such as cell migration and invasion, wound repair, bone remodeling, angiogenesis, and embryonic growth. MMP–9 is shown to be involved in the progression of several diseases including many cancers, cardiovascular diseases, CNS diseases, respiratory diseases, and arthritis. In cancer, MMP–9 is thought to promote growth, migration, and spread of cancer cells by catalyzing the degradation of extracellular matrix proteins, releasing bound growth factors, and allowing cancer cells to escape from the primary tumor.

NIH *Inventors* have discovered that specific polypeptides corresponding to Blade-1 region of MMP–9 hemopexin domain can stimulate migration of cells, specifically the migration of cells expressing β1 integrin. The present technology can be used to develop novel therapeutic candidates for the prevention and treatment of human disease conditions mediated by MMP–9 promoted cell migration, e.g., cancer, inflammation, fibrotic diseases, cardiovascular diseases, CNS diseases, respiratory diseases, angiogenesis and arthritis.

Applications: Development of therapeutics for treating or preventing human diseases (cancer) using MMP–9 Blade-1 domain polypeptides or peptide analogs.

Development Status: Early-stage.

Inventors: SK Akiyama *et al.* (NIEHS)

Patent Status: U.S. Provisional Application No. 61/360,328 filed 30 Jun 2010 (HHS Reference No. E–146–2010/0–US–01)

Licensing Status: Available for licensing.

Licensing Contact: Suryanarayana Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Environmental Health Sciences, Laboratory of Molecular Carcinogenesis, Cell Adhesion Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Elizabeth M. Denholm, PhD at 919–541–0981 or *denholme@mail.nih.gov* for more information.

Melanocyte Pigmentation or Proliferation With Neuregulin: Compositions and Methods to Treat Skin Disorders, Including Skin Cancer

Description of Invention: Human skin pigmentation is regulated by complex and intricate interactions among melanocytes and keratinocytes in the epidermis and fibroblasts in the dermis. A number of factors secreted from keratinocytes and/or from fibroblasts have been shown to be involved in regulating skin pigmentation after UV exposure. NIH investigators have previously demonstrated that the less pigmented and thicker skin on the palms and soles is regulated by underlying fibroblasts in those areas, specifically via a secreted factor (DKK1) that modulates Wnt signaling. Now, using microarray analysis to compare gene expression patterns in 15 different primary dermal fibroblast populations derived from the dorsal trunk skin of three different skin phototypes (I, III and VI), these investigators have identified a number of genes that differ dramatically in expression. One among them, neuregulin 1 (NRG–1), secreted by fibroblasts derived from dark skin, effectively increases the pigmentation of melanocytes in tissue culture and in an artificial skin model and regulates their growth, suggesting it is one of the major factors determining human skin color. NRG-1 was observed to be highly expressed by fibroblasts derived from darker skin. NIH investigators believe that NRG–1 increases the proliferation of human melanocytes via the phosphorylation of Akt. These results suggest a potential role for NRG–1 in regulating constitutive human skin color and perhaps its dysfunction in pigmentary skin diseases. Based on these observations, NIH investigators are currently developing compositions and methods of modulating pigmentation and proliferation of a melanocyte to prevent or treat skin disorders, including skin cancer.

Applications:

- Therapeutics for skin disorders.
- Therapeutics for skin cancer.

Development Status: Early stage and studies on reconstructed skin model and in melanocytes.

Inventors: Vincent J. Hearing and Wonseon Choi (NCI)

Related Publications:

1. Choi W, Wolber R, Gerwat W, Mann T, Hearing VJ. Characterization of the influence of fibroblasts on melanocyte function and pigmentation. In: Proc. XXth Intl. Pigment Cell Conf., edited by K. Jimbow, Bologna, Italy: Medimond, 2008, p. 79–82.

2. Choi W, Wolber R, Gerwat W, Mann T, Batzer J, Smuda C, Liu H, Kolbe L, Hearing VJ. A novel fibroblast-derived melanogenic paracrine factor neuregulin-1 (NRG–1) that modulates the constitutive color and melanocyte function in human skin. J. Cell Sci. in press, 2010.

Patent Status: U.S. Provisional Application No. 61/357,846 filed 23 Jun 2010 (HHS Reference No. E–100–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Suryanarayana Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, Laboratory of Cell Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of NRG–1 (or modifiers of its function) to regulate skin pigmentation. Please contact John Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: August 17, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–20862 Filed 8–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Food and Drug Administration Clinical Trial Requirements, Regulations, Compliance, and Good Clinical Practice; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) New Jersey District Office, in cosponsorship with the Society of Clinical Research Associates (SoCRA) is announcing a public workshop. The public workshop on FDA's clinical trial requirements is designed to aid the clinical research professional's understanding of the mission, responsibilities, and authority of FDA and to facilitate interaction with FDA representatives. The program will focus on the relationships among FDA and clinical trial staff, investigators, and institutional review boards (IRBs). Individual FDA representatives will discuss the informed consent process and informed consent documents; regulations relating to drugs, devices, and biologics; as well as inspections of clinical investigators, IRBs, and research sponsors.

Date and Time: The public workshop will be held on November 4 and 5, 2010, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Hyatt Regency Jersey City, Two Exchange Pl., Jersey City, NJ 07302, 1–800–233–1234. (The hotel is connected to the PATH Train to New York City). Attendees are responsible for their own accommodations. Please mention SoCRA to receive the hotel room rate of $169 plus applicable taxes (available until October 20, 2010, or until the SoCRA room block is filled).

Contact: Joan Lytle, Food and Drug Administration, 120 North Central Dr., North Brunswick, NJ 08902, 732–940–8946 ext. 33, FAX: 732–940–8936, or Society of Clinical Research Associates (SoCRA), 530 West Butler Ave., suite 109, Chalfont, PA 18914, 800–762–7292, FAX: 215–822–8633, email: *SoCRAmail@aol.com*, Web site: *http://www.SoCRA.org*.

Registration: The registration fee covers the cost of actual expenses, including refreshments, lunch, materials, and speaker expenses. Seats are limited; please submit your registration as soon as possible. Workshop space will be filled in order or receipt of registration. Those accepted into the workshop will receive confirmation. The cost of registration is as follows: SoCRA member ($575.00), SoCRA nonmember (includes membership) ($650.00), FDA/Federal Government member ($450.00), FDA/Federal Government nonmember ($525.00).

If you need special accommodations due to a disability, please contact SoCRA (see *Contact*) at least 10 days in advance.

Extended periods of question and answer and discussion have been included in the program schedule. This program offers 13.3 hours of continuing medical education (CME) and continuing nursing education (CNE) credit. *CME for Physicians*: SoCRA is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians. *CNE for Nurses*: SoCRA is an approved provider of continuing nursing education by the Pennsylvania State Nurses Association (PSNA), an accredited approver by the American Nurses Credentialing Center's Commission on Accreditation (ANCC). ANCC/PSNA Provider Reference Number: 205–3–A–09.

Registration instructions: To register, please submit a registration form with your name, affiliation, mailing address, phone, fax number, and email, along with a check or money order payable to "SoCRA". Mail to: SoCRA (see *Contact* for address). To register via the Internet, go to *http://www.socra.org/html/FDA_Conference.htm*. (FDA has verified the Web site address, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Payment by major credit card is accepted (Visa/MasterCard/AMEX only). For more information on the meeting registration, or for questions on the workshop, contact SoCRA (see *Contacts*).

SUPPLEMENTARY INFORMATION: The public conference helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The workshop will provide those engaged in FDA-regulated (human) clinical trials with information on a number of topics concerning FDA requirements related to informed consent, clinical investigation requirements, IRB inspections, electronic record requirements, and investigator initiated research. Topics for discussion include the following: (1) What FDA expects in a pharmaceutical clinical trial; (2) adverse event reporting—science, regulation, error, and safety; (3) Part 11 Compliance—Electronic signatures; (4) informed consent regulations; (5) IRB regulations and FDA inspections; (6) keeping informed and working together; (7) FDA conduct of clinical investigator inspections; (8) meetings with FDA: why, when, and how; (9) investigator initiated research; (10) medical device aspects of clinical research; (11) working with FDA's Center for Biologics Evaluation and Research; (12) the inspection is over—what happens next? Possible FDA compliance actions.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The public workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The public workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) as outreach activities by Government agencies to small businesses.

Dated: August 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–20834 Filed 8–20–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Quality and Compliance in Merging and Emerging Cultures; Public Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public conference entitled "The New Paradigm: Quality and Compliance in Merging and Emerging Cultures." The conference, cosponsored with the Parenteral Drug Association (PDA), will focus on challenges facing the medical products industry in navigating regulatory compliance, achieving worldwide quality improvement, and enhancing quality system controls in an environment of merging and emerging cultures.

Date and Time: The public conference will be held on Monday, September 13, 2010, from 7 a.m. to 6 p.m.; Tuesday, September 14, 2010, from 7:30 a.m. to 6:30 p.m.; and Wednesday, September 15, 2010, from 7:30 a.m. to 12:15 p.m.

Location: The public conference will be held at the Renaissance Hotel, 999 9th St., NW., Washington, DC 20001, 202–898–9000, FAX: 202–289–0947.

Contact: Wanda Neal, Parenteral Drug Association, PDA Global Headquarters, Bethesda Towers, 4350 East-West Hwy., suite 200, Bethesda, MD 20814, 301–656–5900, FAX: 301–986–1093, email: *info@pda.org*.

Accommodations: Attendees are responsible for their own

accommodations. To make reservations at the Renaissance Hotel at the reduced conference rate, contact the Renaissance Hotel (see *Location*), citing meeting code "PDA." Room rates are: Single: $288, plus 14.5% state and local taxes and Double: $288, plus 14.5 state and local taxes. Reservations can be made on a space and rate availability basis.

Registration: Attendees are encouraged to register at their earliest convenience. The PDA registration fees cover the cost of facilities, materials, and refreshments. Seats are limited; please submit your registration as soon as possible. Conference space will be filled in order of receipt of registration. Those accepted for the conference will receive confirmation. Registration will close after the conference is filled. Onsite registration will be available on a space available basis on each day of the public conference beginning at 7 a.m. on Monday, September 13, 2010. The cost of registration is as follows:

COST OF REGISTRATION

Affiliation	Fee
PDA Members	$1850
PDA Non-Members	$2099
Government	$700
PDA Member Academic/ Health Authority	$700
PDA Non-Member Academic/Health Authority	$800
PDA Member Students	$280
Non-Member Students	$310

If you need special accommodations because of a disability, please contact Wanda Neal, at least 7 days in advance of the conference.

Registration instructions: To register, please submit your name, affiliation, mailing address, telephone, fax number, and email address, along with a check or money order payable to "PDA." Mail to: PDA, Global Headquarters, Bethesda Towers, 4350 East West Hwy., suite 200, Bethesda, MD 20814. To register via the Internet, go to the PDA Web site, *https://store.pda.org/events/registration/registration_start_choose_type*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

The registrar will also accept payment by major credit cards (VISA/MasterCard only). For more information on the meeting, or for questions on registration, contact the PDA (see *Contact*).

Transcripts: As soon as a transcript is available, it can be obtained in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: The PDA/FDA Joint Public Conference offers the unique opportunity for participants to join FDA representatives and industry experts in face-to-face dialogues. Each year, FDA speakers provide updates on current efforts affecting the development of global regulatory strategies, while industry professionals from some of today's leading pharmaceutical companies present case studies on how they employ global strategies in their daily processes.

Through a series of sessions and meetings, the conference will provide participants with the opportunity to hear directly from FDA experts and representatives of global regulatory authorities on best practices, including:

- Pharmaceutical Safety and Good Distribution Practices
- Patient Requirements and Product Development
- Quality Unit Responsibility
- Continual Improvement
- Technology Transfer
- Supply Chain
- Combination Products
- Recall Root Causes
- Biologics
- Knowledge Management
- Foreign Inspection Practices
- Process Validation
- Risk Management in Manufacturing
- Change Control

Dated: August 18, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–20844 Filed 8–20–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Genetics of Aging in Drosophila.

Date: September 15, 2010.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Aging Bone.

Date: September 29, 2010.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Health and Well-Being.

Date: December 1, 2010.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 17, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20868 Filed 8–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

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: Recombinant DNA Advisory Committee.

Date: September 15–17, 2010.

Time: September 15, 2010, 1:30 p.m. to 5:30 p.m.

Agenda: The Office of Biotechnology Activities (OBA) and NIH Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols as well as related data management activities. Please check the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html* for more information.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Executive Meeting Center, Rockville, MD 20852.

Time: September 16, 2010, 8 a.m. to 5:30 p.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols, have a discussion of ethical considerations in review of pediatric protocols, and discuss related data management activities. Please check the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html* for more information.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Executive Meeting Center, Rockville, MD 20852.

Time: September 17, 2010, 8 a.m. to 1 p.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols, have a discussion of ethical considerations in review of pediatric protocols, and discuss related data management activities. Please check the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html* for more information.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Executive Meeting Center, Rockville, MD 20852.

Contact Person: Chezelle George, Office of Biotechnology Activities, Office of Science Policy/OD, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892. 301–496–9838. *georgec@od.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 17, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20861 Filed 8–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of a Meeting of a Working Group of the NIH Advisory Committee to the Director

The purpose of this notice is to inform the public about a meeting of the NIH Blue Ribbon Panel to Advise on the Risk Assessment of the National Emerging Infectious Diseases Laboratories (NEIDL) at Boston University Medical Campus.

The meeting will be held Wednesday, September 22, 2010 at the Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814 from approximately 8:30 a.m. to 3:30 p.m.

This meeting is the third in a series of public meetings between the Blue Ribbon Panel and the National Research Council Committee on Technical Input (NRC Committee) to review and discuss the ongoing supplementary risk assessment study being conducted for the Boston University NEIDL.

The meeting will be open to the public, with attendance limited to space available. There will be a live webcast of the meeting which can be accessed at *http://nihblueribbonpanel-bumc-neidl.od.nih.gov/.* 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.

Oral public comment will begin at approximately 3 p.m. Written comments may be provided, as well, by sending them to the address below. Written comments must be postmarked by October 1, 2010 and should include the name, address, telephone number and, when applicable, the business or professional affiliation of the commenter.

A draft agenda and slides for the meeting may be obtained by connecting to *http://nihblueribbonpanel-bumc-neidl.od.nih.gov/.* For additional information concerning this meeting, contact Ms. Kelly Fennington, Senior Health Policy Analyst, Office of Biotechnology Activities, Office of Science Policy, Office of the Director, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985; telephone 301–496–9838; e-mail *fennington@nih.gov.*

Dated: August 16, 2010.

Amy P. Patterson,

Acting Director, Office of Science Policy, National Institutes of Health.

[FR Doc. 2010–20860 Filed 8–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract

proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Global Data Center for Fogarty International Center.

Date: September 13, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892–9304, 301–435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 16, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20859 Filed 8–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Council for Human Genome Research.

The meetings 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 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/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 Council for Human Genome Research.

Date: February 7–8, 2011.

Open: February 7, 2011, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Closed: February 7, 2011, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Closed: February 8, 2011, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892. 301–496–7531. *guyerm@mail.nih.gov.*

Name of Committee: National Advisory Council for Human Genome Research.

Date: May 16–17, 2011.

Open: May 16, 2011, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Closed: May 16, 2011, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Closed: May 17, 2011, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892. 301–496–7531. *guyerm@mail.nih.gov.*

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 12–13, 2011.

Open: September 12, 2011, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Closed: September 12, 2011, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Closed: September 13, 2011, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892. 301–496–7531. *guyerm@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 17, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20858 Filed 8–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Heart Failure Clinical Trial.

Date: September 3, 2010.

Time: 1 p.m. to 3 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: Youngsuk Oh, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for

Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: *August 16, 2010.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–20857 Filed 8–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0427]

Public Workshop on Medical Devices and Nanotechnology: Manufacturing, Characterization, and Biocompatibility Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled "Medical Devices & Nanotechnology: Manufacturing, Characterization, and Biocompatibility Considerations." The purpose of this workshop is to obtain information on manufacturing, characterization, and biocompatibility evaluation of medical devices containing or utilizing nanomaterials and nanostructures, including diagnostics. FDA is seeking input on these topics and requests comments on a number of related questions.

Date and Time: The workshop will be held on September 23, 2010, 8 a.m. to 5 p.m. Persons interested in attending, must register by 5 p.m. on September 15, 2010. Space availability permitting, on-site registration will be available on a first come first serve basis. If you would like your comments to be considered for workshop discussion, please submit your comments by September 15, 2010. Please submit all other comments by October 22, 2010.

Location: The public workshop will be held at the Hilton Washington DC/North Gaithersburg, 620 Perry Pkwy, Gaithersburg, MD 20877. For directions, please contact the hotel at 301–977–8900 or refer to their Web page at: *www.gaithersburg.hilton.com.*

Contact Person: Daya Ranamukhaarachchi, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5574, Silver Spring, MD 20993, 301–796–6155, FAX: 301–847–8510, email: *Daya.Ranamukhaarachchi@fda.hhs.gov.*

Registration and Requests for Oral Presentations: Interested persons must register by September 15, 2010 at *http://www.fda.gov/MedicalDevices/NewsEvents/WorskshopsConferences/default.htm* (select the appropriate meeting from the list). Registrants must provide the following information: (1) Name, (2) title, (3) company or organization (if applicable), (4) mailing address, (5) telephone number, (6) email address, and (7) request to make an oral presentation or be a participant in round-table discussions (if applicable). There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:30 a.m.

If you wish to make an oral presentation during any of the public comment sessions at the workshop (see section II of this document), you must indicate this at the time of registration. FDA requests that presentations focus on the areas defined in section III of this notice. You should also identify which discussion topic you wish to address in your presentation. In order to keep each open session focused on the discussion topic at hand, each oral presentation should address only one discussion topic. FDA will do its best to accommodate requests to speak. Registered participants may send written material for oral presentations to the contact person by 5 p.m. on September 15, 2010.

If you would like to participate in the two planned round-table discussions (see section II of this document), you must indicate this interest at the time of registration, and also submit a brief statement that describes your experience or expertise with nanotechnology. There will be a limited number of round-table participants. FDA will attempt to have a range of constituencies represented in this discussion group. Others in attendance at the public workshop will have an opportunity to listen to each round-table discussion and provide public comments, time permitting.

If you need special accommodations due to a disability, please contact Susan Monahan at 301–796–5661 or email: *susan.monahan@fda.hhs.gov* at least 7 days in advance of the public workshop.

Comments: FDA is holding this public workshop to obtain information on a number of specific questions regarding manufacturing and characterization requirements and the biocompatibility evaluation for medical devices utilizing nanotechnology. If you would like your comments to be considered for workshop discussion, please submit your comments by September 15, 2010. Please submit all other comments by October 22, 2010.

Regardless of attendance at the public workshop, interested persons may submit to the Division of Dockets Management either electronic or written comments on this document. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined below, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

Nanomaterials, measured in nanometers (a billionth of a meter), often possess physical and chemical properties that are different from their larger counterparts. Due to the high surface area to volume ratio, the small size, and the type of nanoscale material, these materials may exhibit altered magnetic, electrical, optical properties and altered chemical and biological activities. These characteristics provide the potential for nanomaterials to be used in a variety of medical device applications. However, some of these nanomaterial properties may also present safety concerns that are not found in their larger counterparts. The use of nanotechnology is increasingly applicable and provides novel opportunities in medical device development. The scientific hurdles (e.g., biocompatibility and toxicity) for safe use of nanomaterials in medical devices, including the processes and standards for their manufacture and characterization, are not understood.

In July 2007, FDA's Nanotechnology Task Force issued a report describing the state of the science and regulatory challenges in translating nanotechnology into FDA-regulated products (available at *http://www.fda.gov/ScienceResearch/SpecialTopics/Nanotechnology/NanotechnologyTaskForceReport2007/default.htm*). A general finding of the report is that nanoscale materials

present regulatory challenges similar to those posed by products using other emerging technologies and that these challenges may be magnified because nanotechnology can be used in, or used to make, any FDA-regulated product. In addition, the properties of a material with features in the nanoscale range might change, impacting the safety and effectiveness of the FDA-regulated products.

The objective of this public workshop is to obtain information on manufacturing, characterization, and evaluation of biocompatibility of medical devices containing or utilizing nanomaterials and nanostructures.

II. Public Participation

There are two types of opportunities for participation planned for the public workshop: Time limited oral presentations and round-table discussions.

If you wish to make an oral presentation during the public workshop, you must indicate this at the time of registration. The number of presentations may be limited based on the number of requests received during the public comment period. When registering, you will be required to identify the title of the topic you wish to address in your presentation and answer all the related questions on the registration form at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*. FDA will do its best to accommodate requests to present and will focus discussion to the topics described in this document (see section III of this document). Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for joint presentations. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is to begin.

To close each of the two sessions, FDA will hold a round-table discussion between FDA staff and selected participants representing a range of constituencies. If you wish to be a participant in round-table discussions, you must indicate this interest at the time of registration, and also submit a brief statement that describes your experience or expertise with nanotechnology. FDA will attempt to have a range of constituencies represented in this discussion group. Others in attendance at the workshop will have an opportunity to listen during each round-table discussion and provide public comments, time permitting. FDA will determine the participants based on the requests received. The participants in each round-table discussion will remark on the presentations given during the session, engage in a dialogue with each other and FDA staff, and provide closing thoughts on the session. Round-table participants will not be asked to develop consensus opinions during the discussion, but rather to provide their individual perspectives.

III. Issues for Discussion

The workshop will focus on two topics: (1) Manufacturing and characterization of medical devices containing or utilizing nanomaterials or nanostructures; (2) biocompatibility evaluation of medical devices containing or utilizing nanomaterials or nanostructures. The discussion on manufacturing and characterization will include the evaluation of physico-chemical properties of nanomaterials or nanostructures, characterization methods required, device manufacturing processes and evaluation of the final processed device after sterilization, and stability and aging studies. The discussion on biocompatibility evaluation will include testing for potential release of nanomaterials and additional testing considerations other than standard testing methods to determine the biocompatibility and toxicity of devices containing or utilizing nanomaterials or structures. For further information, please refer to the meeting registration Web page at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*.

IV. Transcripts

Please be advised that as soon as a transcript is available, it can be obtained in either hardcopy or on CD–ROM, after submission of a Freedom of Information Act request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list).

Dated: August 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–20837 Filed 8–20–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute's Best Practices for Biospecimen Resources

AGENCY: National Institutes of Health (NIH), National Cancer Institute (NCI).

ACTION: Notice with request for comment.

SUMMARY: As part of the commitment to maintaining current and scientifically accurate best practices, the National Cancer Institute (NCI) is seeking public comment on a revised version of the *NCI Best Practices for Biospecimen Resources*. This revised version of the *NCI Best Practices* is intended to both respond to comments received from the biospecimen resource community and provide more current and detailed recommendations related to biospecimen and data quality. Major revisions include the addition of new sections on Biospecimen Resource Management and Operations and Conflict of Interest, expansion of recommendations related to Custodianship and Informed Consent based on NCI workshops, addition of current references throughout the document and harmonization with current federal guidance documents and recommendations from international biospecimen organizations.

DATES: *Effective Date:* The updated *NCI Best Practices for Biospecimen Resources* are open for public comment for a period of 30 days. Comments must be received by September 22, 2010 in order to ensure consideration. After the public comment period has closed, the comments received by NCI will be considered in a timely manner by the NCI Office of Biorepositories and Biospecimen Research. Subsequently, appropriate changes will be made on the Best Practices Web site *http://biospecimens.cancer.gov/bestpractices/*.

ADDRESSES: Comments submitted via e-mail should use *nciobbr@mail.nih.gov* and enter "NCI Best Practices" in the subject line. While NCI prefers that comments be sent by email, NCI will accept written comments. Written comments may be sent to: NCI/OBRR, NIH, 11400 Rockville Pike, Rockwall I Building, Bethesda, MD 20892, Attn: Dr. Nicole Lockhart.

FOR FURTHER INFORMATION CONTACT: Implementation assistance and inquiries should be directed to senior staff of the relevant NCI Extramural and Intramural Program offices.

SUPPLEMENTARY INFORMATION: The *NCI Best Practices for Biospecimen Research*

may be found online at *http://biospecimens.cancer.gov/bestpractices/*.

Dated: August 12, 2010.

Douglas R. Lowy,

Deputy Director, National Cancer Institute, National Institutes of Health.

[FR Doc. 2010–20872 Filed 8–20–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Measures of Health Plan Efforts To Address Health Plan Members' Health Literacy Needs

AGENCY: Agency for Healthcare Research and Quality (AHRQ), DHHS.

ACTION: Notice of request for measures.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is soliciting the submission of instruments or items that measure how well health plans and health providers address health plan enrollees' health literacy needs and how well they communicate with health plan enrollees. This initiative is in response to the need identified by AHRQ to develop a new supplemental item set (the "new instrument") for addressing health literacy for the CAHPS® Health Plan Survey. The intent of the planned survey is to gain patients' perspective on how well health and health plan information is communicated to them by healthcare professionals and health plans. The results of the planned survey may become an important source of information for health plans, clinicians, group practices, and other interested parties assessing quality of health information or planning changes in how health plan information is delivered to health plan enrollees.

Based on prior work, there are several functional areas that the new instrument could address. Depending on the communication mode, the new instrument could assess, for example, clarity and simplicity of provided health information related to: (a) Preventive services (*e.g.*, risks and benefits of the service, explanation of screening results); (b) health problems/concerns (*e.g.*, information on how to stay healthy or prevent illness); (c) treatment choices, instructions, or goals (*e.g.*, pros and cons of each option); (d) medications (*e.g.*, reason for taking medications, instructions on how to take medications, possible side effects); and, (e) care management/disease management. A survey using the new instrument may also assess the quality of services supporting health information delivery such as language access (*e.g.*, availability and timeliness of customer service and interpreter services in other languages, availability of forms and patient education materials in other languages), the quality and accessibility of member services and nurse advice lines, the quality and accessibility of health plan information on coverage, benefits, and billing information (including availability in other languages), health plan system navigation and health plan environment (language access and assistance in completing medical paperwork or forms, signage).

DATES: Please submit instruments and supporting information on or before October 22, 2010. AHRQ will not respond individually to submitters, but will consider all submitted instruments and publicly report the results of the review of the submissions in aggregate.

ADDRESSES: Submissions should include a brief cover letter, a copy of the instrument or items for consideration and supporting information as specified under the Submission Criteria below. Submissions may be in the form of a letter or e-mail, preferably with an electronic file as an E-mail attachment. Responses to this request should be submitted to:

Cindy Brach, Center for Delivery, Organization, and Markets, Agency for Healthcare Research and Quality, 540 Gaither Road, Room 5129, Rockville, MD 20850, *Phone:* (301) 427–1444, *Fax:* (301) 427–1430, *E-mail: Cindy.Brach@AHRQ.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Cindy Brach, at the address above.

Submission Criteria

Instruments and items submitted should focus on patients' perspective on quality of health and health plan information provided by health plans, clinicians, and/or group practices.

Measures submitted must meet these criteria to be considered: (a) Assess patients' or their caregivers' experiences receiving health and health plan information and (b) demonstrate substantial reliability and validity. Submitters must agree to grant to the Government a nonexclusive, irrevocable, royalty-free right to use, distribute to the public, reproduce and create derivative works from the proffered instruments, items or their arrangement. AHRQ must have the right to freely use and authorize others to use the new instrument, which will be distributed under the CAHPS® trademark. The new instrument will combine the best features of all the submissions as well as any ideas that may develop from reviewing them. AHRQ, in collaboration with CAHPS grantees, will evaluate all submitted instruments or items. As they construct the CAHPS instrument, they may select one or more proffered instruments and their items either in whole or in part or modify the items prior to testing them. AHRQ will own and assume responsibility for new instrument as well as any future modifications to it. The new instrument will bear the CAHPS® trademark and it will be made freely available for use by all interested parties.

Each submission should include the following information: The name of the instrument, domains included, language(s) the instrument is available in, evidence of cultural/cross group comparability, if any, instrument reliability (internal consistency, test-retest, *etc.*), validity (content, construct, criterion-related), response rates, methods and results of cognitive interviews/testing and field-testing and description of sampling strategies (including payer type) and data collection protocols, including such elements as mode of administration, use of advance letters, timing and frequencies of contacts. In addition, a list of where the instrument has been fielded should also be included in the submission. Submission of copies of existing report formats developed to disclose findings to consumers and providers is desirable, but not required. Additionally, information about existing database(s) for the instrument(s) submitted is helpful, but not required for submission. Evidence of the criteria should be demonstrated through publication and submission of peer-reviewed journal article(s) or through the best evidence available at the time of submission. Please include citations of peer-reviewed journal articles.

To facilitate handling of submissions, please include full information about the instrument developer or contact: (a) Name; (b) title; (c) organization; (d) mailing address; (e) telephone number; (f) fax number; and (g) e-mail address.

SUPPLEMENTARY INFORMATION:

Background

The CAHPS program was initiated in 1995 to develop a survey and report on the consumers' perspective on the quality of their health plans. Since that time, the CAHPS program in partnership with CMS and others has expanded its scope and developed surveys and reports regarding individual clinicians, group practices, in-center hemodialysis services, nursing

homes and hospitals. AHRQ determined that the CAHPS teams should develop a survey to obtain the consumers' perspective on the quality of health information. The CAHPS program is conducted pursuant to AHRQ's statutory authority to conduct and support research and disseminate information on health care and on systems for the delivery of such care, including activities with respect to: The quality, effectiveness, efficiency, appropriateness and value of health care services; quality measurement and improvement; the outcomes, cost, cost-effectiveness, and use of health care services and access to such services; and health statistics, surveys, database development, and epidemiology. *See* 42 U.S.C. 299a(a)(1), (2), (3) and (8).

The vision of the Agency for Healthcare Research and Quality is to foster health care research that helps the American health care system provide access to high-quality, cost effective services; be accountable and responsive to consumers and purchasers; and improve health status and quality of life. The CAHPS program was developed as a result of the AHRQ's vision. One of the components missing from the current measurement set is an assessment of patients' perspective on how well health plans, hospital, clinicians, and group practices address health literacy issues.

Dated: August 10, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–20679 Filed 8–20–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3311–EM; Docket ID FEMA–2010–0002]

Rhode Island; Amendment No. 4 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Rhode Island (FEMA–3311–EM), dated March 30, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the Supplemental Appropriations Act, 2010, Public Law 111–212, FEMA is amending the cost-sharing arrangement concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5140b, 5172, and 5123 for the emergency declared on March 30, 2010, for the State of Rhode Island due to the damage resulting from severe storms and flooding. The Rhode Island emergency declaration is amended as follows:

Federal funds for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program provided under this declaration are authorized at 90 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20777 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1932–DR; Docket ID FEMA–2010–0002]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1932–DR), dated August 10, 2010, and related determinations.

DATES: *Effective Date:* August 10, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 10, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe storms, flooding, and tornadoes during the period of June 7 to July 21, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act").

Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael R. Scott, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

The counties of Atchison, Brown, Butler, Chase, Clay, Cloud, Comanche, Doniphan, Ellis, Franklin, Greenwood, Harvey, Jewell, Kiowa, Lyon, Marion, Marshall, Miami, Mitchell, Morris, Norton, Osage, Osborne, Pawnee, Phillips, Pottawatomie, Republic, Riley, Rooks, Rush, Smith, Wabaunsee, Washington, and Woodson for Public Assistance.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA);

97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20772 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1933–DR; Docket ID FEMA–2010–0002]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1933–DR), dated August 11, 2010, and related determinations.

DATES: *Effective Date:* August 11, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 11, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Wisconsin resulting from severe storms, tornadoes, and flooding during the period of July 20–24, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Paul J. Ricciuti, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Wisconsin have been designated as adversely affected by this major disaster:

Grant and Milwaukee Counties for Public Assistance.

All counties within the State of Wisconsin are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20771 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1931–DR; Docket ID FEMA–2010–0002]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1931–DR), dated August 3, 2010, and related determinations.

DATES: *Effective Date:* August 13, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 3, 2010.

Cottle, Floyd, Foard, Garza, Lamb, Lubbock, Lynn, Motley and Terry Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20762 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1887–DR; Docket ID FEMA–2010–0002]

South Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1887–DR), dated March 10, 2010, and related determinations.

DATES: *Effective Date:* August 13, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management

Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Nancy M. Casper as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20764 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1915–DR; Docket ID FEMA–2010–0002]

South Dakota; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1915–DR), dated May 13, 2010, and related determinations.

DATES: *Effective Date:* August 13, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Nancy M. Casper as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20765 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1916–DR; Docket ID FEMA–2010–0002]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1916–DR), dated May 14, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the Supplemental Appropriations Act, 2010, Public Law 111–212, FEMA is amending the cost-sharing arrangement concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5140b, 5172, and 5123 for the major disaster declared on May 14, 2010, for the State of Mississippi due to the damage resulting from severe storms, tornadoes, and flooding. The Mississippi major disaster declaration is amended as follows:

Federal funds for all categories of Public Assistance (Categories A–G) provided under this declaration are authorized at 90 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20766 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1930–DR; Docket ID FEMA–2010–0002]

Iowa; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1930–DR), dated July 29, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those

areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 29, 2010.

Jasper, Mahaska, and Polk Counties for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20768 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1925–DR; Docket ID FEMA–2010–0002]

Kentucky; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1925–DR), dated July 23, 2010, and related determinations.

DATES: *Effective Date:* August 12, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 23, 2010.

Madison, Mason, and Rowan Counties for Individual Assistance.

Madison County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator,Federal Emergency Management Agency.

[FR Doc. 2010–20784 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1886–DR; Docket ID FEMA–2010–0002]

South Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1886–DR), dated March 9, 2010, and related determinations.

DATES: *Effective Date:* August 13, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Nancy M. Casper as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20782 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1914–DR; Docket ID FEMA–2010–0002]

South Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1914–DR), dated May 13, 2010, and related determinations.

DATES: *Effective Date:* August 13, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Nancy M. Casper as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20780 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1906–DR; Docket ID FEMA–2010–0002]

Mississippi; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1906–DR), dated April 29, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the Supplemental Appropriations Act, 2010, Public Law 111–212, FEMA is amending the cost-sharing arrangement concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5140b, 5172, and 5123 for the major disaster declared on April 29, 2010, for the State of Mississippi due to the damage resulting from severe storms, tornadoes, and flooding. The Mississippi major disaster declaration is amended as follows:

Federal funds for all categories of Public Assistance (Categories A–G), including direct Federal assistance, provided under this declaration are authorized at 90 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20779 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1894–DR; Docket ID FEMA–2010–0002]

Rhode Island; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Rhode Island (FEMA–1894–DR), dated March 29, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the Supplemental Appropriations Act, 2010, Public Law 111–212, FEMA is amending the cost-sharing arrangement concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5140b, 5172, and 5123 for the major disaster declared on March 29, 2010, for the State of Rhode Island due to the damage resulting from severe storms and flooding. The Rhode Island major disaster declaration is amended as follows:

Federal funds for all categories of Public Assistance (Categories A–G) provided under this declaration are authorized at 90 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20776 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1912–DR; Docket ID FEMA–2010–0002]

Kentucky; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1912–DR), dated May 11, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the Supplemental Appropriations Act, 2010, Public Law 111–212, FEMA is amending the cost-sharing arrangement concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5140b, 5172, and 5123 for the major disaster declared on May 11, 2010, for the Commonwealth of Kentucky due to the damage resulting from severe storms, flooding, mudslides, and tornadoes. The Kentucky major disaster declaration is amended as follows:

Federal funds for all categories of Public Assistance (Categories A–G) provided under this declaration are authorized at 90 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20775 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1909–DR; Docket ID FEMA–2010–0002]

Tennessee; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1909–DR), dated May 4, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the Supplemental Appropriations Act, 2010, Public Law 111–212, FEMA is amending the cost-sharing arrangement concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5140b, 5172, and 5123 for the major disaster declared on May 4, 2010, for the State of Tennessee due to the damage resulting from severe storms, flooding, straight-line winds, and tornadoes. The Tennessee major disaster declaration is amended as follows:

Federal funds for all categories of Public Assistance (Categories A–G), including direct Federal assistance, provided under this declaration are authorized at 90 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20774 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1930–DR; Docket ID FEMA–2010–0002]

Iowa; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1930–DR), dated July 29, 2010, and related determinations.

DATES: *Effective Date:* August 14, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the Individual Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 29, 2010.

Hamilton, Ida, Kossuth, and Taylor Counties for Individual Assistance.

Black Hawk, Cherokee, Clayton, Decatur, Delaware, Dubuque, Fayette, Franklin, Howard, Humboldt, Jackson, Jones, Lee, Lucas, Lyon, Marion, O'Brien, Osceola, Ringgold, Sioux, Story, Union, Warren, Webster, and Wright Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20773 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1922–DR; Docket ID FEMA–2010–0002]

Montana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Montana (FEMA–1922–DR), dated July 10, 2010, and related determinations.

DATES: *Effective Date:* August 13, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 13, 2010, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act), in a letter to W. Craig Fugate, Administrator, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in the Chippewa Cree Tribe of the Rocky Boy's

Reservation, resulting from severe storms and flooding during the period of June 15 to July 30, 2010, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act).

Therefore, I amend my declaration of July 10, 2010, to authorize Federal funds for Public Assistance at 100 percent Federal funding of total eligible costs, solely for the Rocky Boy's Reservation.

This adjustment to the Chippewa Cree Tribe of the Rocky Boy's Reservations cost sharing applies only to Public Assistance costs eligible for such adjustments under applicable law. The Stafford Act prohibits a similar adjustment for funds provided under the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20769 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1930–DR; Docket ID FEMA–2010–0002]

Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1930–DR), dated July 29, 2010, and related determinations.

DATES: *Effective Date:* August 13, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 29, 2010.

Black Hawk, Boone, Buchanan, Clayton, Delaware, Dickinson, Dubuque, Emmet, Fayette, Guthrie, Jackson, Jasper, Jones, Lucas, Mahaska, Polk, Sioux, and Story Counties for Public Assistance.

Direct Federal assistance is authorized.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–20767 Filed 8–20–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Public Review of Draft Coastal and Marine Ecological Classification Standard

AGENCY: Department of the Interior, U.S. Geological Survey.

ACTION: Notice; request for comments on draft Coastal and Marine Ecological Classification Standard.

SUMMARY: The Federal Geographic Data Committee (FGDC) is conducting a public review of the draft Coastal and Marine Ecological Classification Standard (CMECS). CMECS provides a means of classifying ecological and habitat units using a common terminology. It provides a uniform protocol for identifying, characterizing and naming ecological units in support of monitoring, protection, and restoration of unique biotic assemblages, protected species, critical habitat, and important ecosystem components. The FGDC Coastal and Marine Spatial Data Subcommittee, chaired by the National Oceanic and Atmospheric Administration (NOAA), developed this draft standard. The FGDC Coordination Group, comprised of representatives of Federal agencies, approved releasing this draft standard for public review at its July 20, 2010 meeting. The FGDC invites all stakeholders in coastal and marine ecology and management to comment on this standard to ensure that the standard meets their needs.

The draft Coastal and Marine Ecological Classification Standard may be downloaded at *http://www.csc.noaa.gov/benthic/cmecs/CMECS_doc.pdf*. Comments shall be submitted online at *http://www.surveymonkey.com/s/22G2S67*.

Comments that concern specific issues/changes/additions may result in revisions to the draft Coastal and Marine Ecological Classification Standard. Reviewers may obtain information about how comments were addressed upon request. After formal endorsement of the standard by the FGDC, the standard and a summary analysis of the changes will be made available to the public on the FGDC Web site.

DATES: Comments on the draft Coastal and Marine Ecological Classification Standard must be submitted no later than Monday, December 13, 2010.

FOR FURTHER INFORMATION: Ms. Julie Binder Maitra, U.S. Geological Survey, Federal Geographic Data Committee, *jmaitra@fgdc.gov*, 703–648–4627.

SUPPLEMENTARY INFORMATION: The FGDC coordinates the development of the National Spatial Data Infrastructure (NSDI), which encompasses the policies, standards, and procedures for organizations to cooperatively produce and share geospatial data. Federal agencies that make up the FGDC develop the NSDI in cooperation with organizations from State, local and tribal governments, the academic community, and the private sector. The authority for the FGDC is OMB Circular No. A–16 Revised on Coordination of Geographic Information and Related Spatial Data Activities (Revised August 19, 2002). More information on the FGDC and the NSDI is available at *http://www.fgdc.gov*. Standards are a foundational component of the NSDI.

The Coastal and Marine Ecological Classification Standard (CMECS) is a framework for organizing scientific information about the marine and coastal environments of the United States. It was developed to provide a common language that facilitates standardization of information in

support of conservation and management efforts and is applicable locally, regionally and nationally. The standard builds on and integrates with existing classification standards. The CMECS domain extends from the coastal tidal splash zone to the deep ocean, including all substrate and water column features of the oceans as well as the deep waters of the Great Lakes.

CMECS describes the defining features of individual habitats via five component classifications. The surface geology component describes the geological composition of surface and near-surface substrates including biogenic structures. The benthic biotic component is a hierarchical classification of the biological composition of coastal and marine benthos. The sub-benthic component classifies characteristics of the sediments and soils below the surface providing detailed information on the composition of the sediment column. The geoform component describes the major geomorphic and structural characteristics of the coasts, islands and the seafloor. The water column component defines and organizes the structure, characteristics and processes of the water column and associated biota. A comprehensive set of modifiers allows the inclusion of additional information on environmental, structural, physical, chemical and biotic features in addition to required elements of the classification. Each component can be used and mapped independently or combined as needed to address specific questions or applications. The proposed standard was developed to be technology- and scale-neutral; users may choose the operational scale and level of detail suited for their purpose. CMECS is a dynamic content standard that will allow additional types and refinement of the classification with improvements in technology and information.

Dated: August 13, 2010.

Ivan DeLoatch,

FGDC Executive Director.

[FR Doc. 2010–20851 Filed 8–20–10; 8:45 am]

BILLING CODE 4311–MM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Environmental Impact Statement for Oil and Gas Development Activities on the Uintah and Ouray Indian Reservation, Utah

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Intent.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), in cooperation with the Ute Indian Tribe, Bureau of Land Management (BLM), U.S. Forest Service (USFS), U.S. Army Corp of Engineers (ACE), U.S. Fish and Wildlife Service (USFWS), U.S. Environmental Protection Agency (EPA), the State of Utah, and Duchesne County, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) that evaluates proposed oil and gas development activities on the Uintah and Ouray Indian Reservation (Reservation), Utah. The Proposed Action consists of drilling up to 4,899 oil and/or natural gas wells over the next 15 years, with a life-of-project of 40 years. In addition to well pad development, linear developments would include roads, pipelines, and power lines. The Proposed Action would also include the development of ancillary facilities such as compressor stations, water treatment facilities, and storage areas. This notice also announces public scoping meetings that will be held to identify potential issues and alternatives to be considered in the EIS.

DATES: The dates of the public scoping meetings will be included in notices posted in the *Vernal Express, Basin Standard,* and *Salt Lake Tribune,* 15 days prior to the meeting. Written comments on the scope of the EIS or implementation of the proposal must arrive within 30 days following the public scoping meeting.

ADDRESSES: You may mail or hand carry written comments to Bucky Secakuku, Realty Specialist, Bureau of Indian Affairs, Uintah and Ouray Agency, 988 South 7500 East, P.O. Box 130, Fort Duchesne, Utah 84026; telephone: (435) 722–4331; e-mail: *Ute.Tribe.EIS@buysandassociates.com.* The locations of the public scoping meetings will be included in notices posted in the *Vernal Express, Basin Standard,* and *Salt Lake Tribune,* 15 days prior to the meeting. *See* **SUPPLEMENTARY INFORMATION** for instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Manuel Moyre, Acting Energy Minerals Director, Ute Indian Tribe, Energy and Minerals Department, 988 South 7500 East Annex Building, P.O. Box 70, Fort Duchesne, Utah 84026; telephone: (435) 725–4967; e-mail: *ManuelM@utetribe.com.*

SUPPLEMENTARY INFORMATION: The goals of this EIS are to provide agency decision makers, the Ute Tribe, and the general public with a comprehensive analysis and understanding of oil and gas development alternatives on the Reservation, and their existing and potential future impacts; to provide a better understanding of the cumulative impacts of increased development on the Reservation; to identify and propose mitigation measures that would minimize or prevent significant adverse impacts; to provide a programmatic National Environmental Policy Act (NEPA) document from which to tier future site-specific environmental analyses of oil and gas development proposals; and to provide a framework for approval of oil and gas operations for the next 15 years.

This EIS analyzes oil and gas development strategies on the Reservation over the next 15 years. For the purposes of this EIS the "Analysis Area" will include a total of 1,886,770 acres. This acreage includes a non-congruent combination of Tribal surface (1,064,570 acres) and estate (873,540 acres) that intermittently overlap across the Reservation.

The Proposed Action consists of drilling up to 4,899 oil and/or natural gas wells over the next 15 years, with a life-of-project of 40 years. Approximately 10 percent of the wells would be drilled on existing pads. Economic conditions and the evaluation of the drilling results would determine the actual number of wells that would be drilled. In addition to well pad development, linear developments would include roads, pipelines, and powerlines. Surface disturbance would also occur as a result of development of ancillary facilities such as compressor stations, water treatment facilities, and storage areas. Initial disturbance from construction of these components is estimated to be approximately 23,254 acres.

The purpose for the activities proposed in this EIS is to economically extract, in an efficient and environmentally compatible manner, the oil and gas resources known to exist in mineral estates held in trust by the United States for the benefit of the Ute Indian Tribe and individual Indians. The action is proposed to meet the Ute Indian Tribe's need to maximize their economic benefit from this trust source.

The BIA will have authority over decisions regarding the EIS and these decisions will be documented in a Record of Decision. Cooperating agencies will provide expertise and data for their resources of interest and will aid in the development of alternatives and mitigation measures that will minimize or prevent significant adverse impacts.

Directions for Submitting Public Comments

Please include your name, return address, and the caption "EIS, Uintah and Ouray Oil and Gas Development," on the first page of your written comments. You may also submit comments at the public scoping meetings.

Public Availability of Comments

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with sections 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of NEPA, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs, by part 209 of the Departmental Manual.

Dated: August 6, 2010.

George T. Skibine,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–20875 Filed 8–20–10; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L12100000.XP0000LX SS150A00006100.241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Arizona Resource Advisory Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC), will meet on September 23, 2010, at the BLM National Training Center located at 9828 North 31st Avenue in Phoenix from 8 a.m. until 4:30 p.m. Agenda items include: BLM State Director's update on statewide issues; Presentation on water processes, issues and strategies affecting public lands in Arizona; State Director Update on the BLM Arizona National Landscape Conservation System (NLCS), Update on the Renewable Energy Strategy and RAC discussion and recommendations on factors BLM should consider as these strategies are implemented; RAC questions on BLM District Managers' Reports; and reports by RAC working groups. A public comment period will be provided at 11:30 a.m. on September 23, 2010, for any interested members of the public who wish to address the Council on BLM programs and business.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation Resource Advisory Council (RRAC), and has the authority to review all BLM and Forest Service (FS) recreation fee proposals in Arizona. The afternoon meeting agenda on September 23, will include a brief review of the Recreation Enhancement Act (REA) Working Group Report, REA Working Group meeting schedule and future BLM/FS recreation fee proposals. The RRAC will review any recreation fee proposals at this meeting.

DATES: *Effective Date:* August 23, 2010.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504.

James G. Kenna,

Arizona State Director.

[FR Doc. 2010–20811 Filed 8–20–10; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 31, 2010. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 7, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Alexandra M. Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Gila County

Tonto National Monument Visitor Center, Arizona State Highway 188, Gila, 10000734

Pima County

Don Martin Apartment House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, AZ MPS), 605 E 9th St, Tucson, 10000748

Eleven Arches, The, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, AZ MPS), 5201 N. Hacienda Del Sol, Tucson, 10000740

Erskine P. Caldwell House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, AZ MPS), 1915 E. Camino Miraval, Tucson, 10000747

First Joesler House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, AZ MPS), 3408 E. Fairmount St, Tucson, 10000741

Gabel, House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, AZ MPS), 5445 N. Camino Escuela, Tucson, 10000742

Haynes Building, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, AZ MPS), 312–314 E. Sixth St, Tucson, 10000743

Hecker House, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, AZ MPS), 2635 N. Camino Principal, Tucson, 10000744

Type A at 2101 E. Water St, (Architecture and Planning of Josias Joesler and John Murphey in Tucson, AZ MPS), 2101 E. Water St, Tucson, 10000745

Type B at 2019 E. Water St, (Architecture and Planning of Josias Joesler and John

Murphey in Tucson, AZ MPS), 2019 E Water St, Tucson, 10000746

ILLINOIS

Cook County

K-Town Historic District, Bounded on the N by W Cullerton St; on the S by W Cermak Rd, on the W by S Kostner Ave, and on the E by S Pulaski Rd, Chicago, 10000724

Johnson County

Johnson County Courthouse, Courthouse Square, Vienna, 10000725

MASSACHUSETTS

Worcester County

First Presbyterian Society Meeting House, 20 Main St, Millbury, 10000722

MISSOURI

Cape Girardeau County

Courthouse—Seminary Neighborhood Historic District, Roughly bounded by Middle, Themis, Main, Aquamsi, and Morgan Oaks St, Cape Girardeau, 10000723

NEW YORK

Hamilton County

Pillsbury Mountain Forest Fire Observation Station, (Fire Observation Stations of New York State Forest Preserve MPS), Pillsbury Mountain, Arietta, 10000728

Montgomery County

Sternberg, Abraham, House, 150 Rte 30A, Schoharie, 10000726

Oneida County

Munson—Williams—Proctor Arts Institute, 310 Genesee St, Utica, 10000727

RHODE ISLAND

Providence County

Edgewood Historic District— Arnold Farm Plat, (Edgewood Neighborhood, Cranston, R.I. MPS), Arnold, Albert, Columbia Aves; parts of Broad St, Pawtuxet Ave, Narragansett Blvd, Cranston, 10000733

TEXAS

Bexar County

Herrera Ranch, Old Somerset Rd at the Medina River, Von Ormy, 10000737

Harris County

Sylvan Beach Pavilion, 554 N Bayshore Dr, La Porte, 10000738

Travis County

Chapman House, 901 E 12th St, Austin, 10000739

UTAH

Salt Lake County

Curtis, Genevieve & Alexander, House, 1119 E Westminster Ave, Salt Lake City, 10000730

Utah County

Loveless House, (Orem, Utah MPS), 509 E 800 S, Orem, 10000729

Verd's Fruit Market Complex, (Orem, Utah MPS), 1320 N State St, Orem, 10000731

Washington County

Grafton Historic District, Beginning at Hall and Grafton Ditch and the Grafton to Rockville Rd, Rockville, 10000732

VIRGINIA

Richmond Independent city

John Rolfe Apartments, 101 Tempsford Ln, Richmond, 10000736

Scott County

Gate City Historic District, Give blocks E and W Jackson St, Scott, 10000735

WASHINGTON

Spokane County

Spokane & Inland Empire Railroad Car Facility, 800 E Spokane Falls Blvd., Spokane, 10000749

[FR Doc. 2010–20783 Filed 8–20–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC01000 L71220000.EU0000 LVTFF0900400 241A; N–87749; 10–08807; MO# 4500012544; TAS: 14X5260]

Notice of Realty Action: Proposed sale of Public Lands, Churchill County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell, at no less than the appraised fair market value, approximately 800 acres of public lands in Churchill County, Nevada, through direct sale procedures under the provisions of Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended. Upon publication of this notice, the lands will be segregated for a period of up to 2 years from all forms of appropriation under the public land laws, including the mining laws, except the sale provisions of FLPMA, in order to facilitate orderly processing of this proposed sale.

DATES: Interested parties may submit written comments to the BLM regarding the proposed sale of these lands until October 7, 2010.

ADDRESSES: Written comments may be submitted by mail to the Field Manager, BLM Stillwater Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701, e-mail: *ccfoweb@nv.blm.gov*, or fax: (775) 882–6147.

FOR FURTHER INFORMATION CONTACT: Erik Pignata, telephone (775) 885–6110 or e-mail *Erik_Pignata@blm.gov*.

SUPPLEMENTARY INFORMATION: The following described public lands in Churchill County, Nevada, proposed for sale are located 65 miles northeast of Fallon, Nevada.

Mount Diablo Meridian

T. 21 N., R. 39 E.,
sec. 2, SW¼;
sec. 3, SE¼;
sec. 10, NE¼;
sec. 14, W½.

The areas described aggregate 800 acres, more or less, in Churchill County. The 2001 BLM Carson City Consolidated Resource Management Plan identifies these public lands as suitable for disposal. The lands are not needed for any Federal purpose, and their disposal would be in the public interest. The sale meets the disposal qualification of Section 205 of the Federal Land Transaction Facilitation Act of July 25, 2000, 43 U.S.C. 2304. The sale will be subject to the provisions of FLPMA and applicable regulations of the Secretary of the Interior (Secretary), specifically those regulations governing direct sale procedures and the patent, when issued, will contain the reservation to the United States of a right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945). All mineral deposits in the parcel shall be reserved to the United States together with the right to prospect for, mine and remove the minerals, according to any regulations the Secretary shall prescribe, along with all necessary access and exit rights.

The conveyance will be subject to:

1. Valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities;

2. A right-of-way, NVN–11441, for a power line granted to Sierra Pacific Power Company, its successors and assigns, pursuant to the Act of March 4, 1911, 43 U.S.C. 961; and

3. An appropriate indemnification clause protecting the United States from claims arising out of the lessees/patentees use, occupancy, or occupations on the leased/patented lands. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), notice is hereby given that the above-described parcel has been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor have any hazardous substances been

disposed of or released on the subject property.

Upon publication of this notice in the **Federal Register**, the described lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Upon segregation, the BLM will no longer accept land use applications affecting the identified public lands, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 43 CFR 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or August 23, 2012, unless extended by the BLM Nevada State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Interested parties and the general public may submit in writing any comments concerning the lands being considered for sale, including notification of any encumbrances or other claims relating to the identified land to the Field Manager, BLM Stillwater Field Office.

In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked by October 7, 2010. Only written comments submitted by mail, e-mail, fax, or delivered to the Field Manager, BLM Stillwater Field Office, and received by the date indicated in the **DATES** section of this notice, will be considered properly filed. Before including your address, phone number, e-mail, 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.

Any adverse comments will be reviewed by the BLM Nevada State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Teresa J. Knutson,

Manager, Stillwater Field Office.

[FR Doc. 2010–20669 Filed 8–20–10; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–718]

In the Matter of Certain Electronic Paper Towel Dispensing Devices and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation To Correct Respondent Names and To Add Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 8) granting complainant's motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 21, 2010, based on a complaint filed by Georgia-Pacific Consumer Products LP of Atlanta, Georgia ("Georgia-Pacific"), alleging violations of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic paper towel dispensing devices and components thereof by reason of infringement of certain claims of United States Patent Nos. 6,871,815; 7,017,856; 7,182,289; and 7,387,274. 75 FR 28651–2 (May 21, 2010). The complainant named as respondents Kruger Products LP of Mississauga, Canada ("Kruger"); KTG USA LP of Memphis, Tennessee ("KTG USA"); Stefco Industries, Inc. of Haines City, Florida ("Stefco"); Cellynne Corporation of Haines City, Florida ("Cellyne"); Draco Hygienic Products Inc. of Ontario, California; NetPak Electronic Plastic and Cosmetic, Inc., d/b/a/Open for Business of Chicago, Illinois ("NetPak Chicago"); NetPak Electronik Plastik ve Kozmetik Sanayi, Ve Ticaret Ltd of Izmir, Turkey ("NetPak Turkey"); Paradigm Marketing Consortium, Inc. of Syosset, New York; United Sourcing Network Corp. of Syosset, New York; New Choice (H.K.) Ltd. of Shatin, Hong Kong; and Vida International Inc. of Taipei, Taiwan.

On June 23, 2010, Georgia-Pacific filed a motion seeking to amend the complaint and Notice of Investigation for the following reasons: (1) To correct the corporate name of NetPak Chicago; (2) to redefine "Kruger" to "Kruger Products and/or KTG USA"; (3) to indicate that Georgia-Pacific no longer alleges that NetPak Turkey is the source of Stefco's and Cellynne's accused product; (4) to add new proposed respondent Jet Power International Limited; (5) to add new proposed respondents Winco Industries Co. and DWL Industries Co.; (6) to add new proposed respondent Ko-Am Corporation d/b/a/Janitors' World; (7) to add new proposed respondent Natury, S.A. De C. V.; (8) to add new proposed respondent Update International Inc.; and (9) to add new proposed respondent Alliance in Manufacturing LLC. No responses to the motion were filed.

On July 29, 2010, the ALJ issued the subject ID granting the motion, finding that, pursuant to Commission Rule 210.14(b)(1) (19 CFR 210.14(b)(1)), there is good cause to correct the corporate names of the identified respondents and to add the newly proposed respondents. No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: August 16, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–20793 Filed 8–20–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–716]

In the Matter of Certain Large Scale Integrated Circuit Semiconductor Chips and Products Containing the Same; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 9) of the presiding administrative law judge ("ALJ") granting complainant's motion to amend the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 5, 2010, based on a complaint filed by Panasonic Corporation ("Panasonic") of Japan. 75 FR 24742–43. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain large scale integrated circuit semiconductor chips and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,933,364 and 6,834,336. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named several respondents including the following: Freescale Semiconductor Xiqing Integrated Semiconductor Manufacturing Site ("Freescale Xiqing") of China; Freescale Semiconductor Innovation Center ("Freescale Innovation") of China; Freescale Semiconductor Pte. Ltd. ("Freescale Pte.") of Singapore; and Premier Farnell Corporation d/b/a Newark ("Premier") of Independence, Ohio.

On July 2, 2010, Panasonic filed an unopposed motion to amend the complaint and notice of investigation to: (1) Substitute Freescale Qiangxin (Tianjin) IC Design Co., Ltd. of China, Freescale Semiconductor (China) Limited of China, and Newark Electronics Corporation and Newark Corporation of Chicago, Illinois for respondents Freescale Xiqing, Freescale Innovation, and Premier, respectively; (2) correct the name and address of Freescale Pte. to Freescale Semiconductor Singapore Pte. Ltd., 10 Ang Mo Kio Street 65, 03–01/03, Singapore 569059; and (3) remove "Ltd." following "Panasonic Corporation" on the cover page of the complaint.

On July 27, 2010, the ALJ issued the subject ID granting Panasonic's unopposed motion to amend the complaint and notice of investigation. No party petitioned for review of the ID pursuant to 19 CFR 210.43(a). The Commission has determined not to review this ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.14 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.14, 210.42(h).

By order of the Commission.

Issued: August 16, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–20795 Filed 8–20–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Final Rule on Default Investments Under Participant Directed Individual Account Plans

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of its regulation relating to default investment alternatives (29 CFR 2550.404c–5). A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before October 22, 2010.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA) states that participants or beneficiaries who can hold individual accounts under their pension plans, and who can exercise control over the assets in their accounts "as determined in regulations of the Secretary [of Labor]" will not be treated as fiduciaries of the plan. Moreover, no other plan fiduciary will be liable for any loss, or by reason of any breach, resulting from the participants' or beneficiaries' exercise of control over their individual account assets.

The Pension Protection Act (PPA), Public Law No. 109–280, amended ERISA section 404(c) by adding subparagraph (c)(5)(A). The new subparagraph says that a participant in an individual account plan who fails to make investment elections regarding his or her account assets will nevertheless be treated as having exercised control over those assets so long as the plan

provides appropriate notice (as specified) and invests the assets "in accordance with regulations prescribed by the Secretary [of Labor]." Section 404(c)(5)(A) further requires the Department of Labor (Department) to issue corresponding final regulations within six months after enactment of the PPA. The PPA was signed into law on August 17, 2006.

The Department of Labor issued a final regulation under ERISA section 404(c)(5)(A) offering guidance on the types of investment vehicles that plans may choose as their "qualified default investment alternative" (QDIA). The regulation also outlines two information collections. First, it implements the statutory requirement that plans provide annual notices to participants and beneficiaries whose account assets could be invested in a QDIA. Second, the regulation requires plans to pass certain pertinent materials they receive relating to a QDIA to those participants and beneficiaries with assets invested in the QDIA as well to provide certain information on request. The ICRs are approved under OMB Control Number 1210–0132, which is scheduled to expire on October 31, 2010.

II. Current Actions.

This notice requests public comment pertaining to the Department's request for extension of OMB approval of the information collection contained in its final rule at 29 CFR 2550.404c–5. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICRs is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Default Investment Alternatives under Individual Account Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0132.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 1,700.

Responses: 66,991,403.

Estimated Total Burden Hours: 795,219.

Estimated Total Burden Cost (Operating and Maintenance): $24,711,418.

III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- 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.*, by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: August 17, 2010.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2010–20799 Filed 8–20–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Regulation Relating to Loans to Plan Participants and Beneficiaries Who Are Parties in Interest With Respect to the Plan

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of its regulation relating to loans to plan participants and beneficiaries who are parties in interest with respect to the plan (29 CFR 2550.408b–1). A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the Addresses section on or before October 22, 2010.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The Employee Retirement Income Security Act of 1974 (ERISA) prohibits a plan fiduciary from causing the plan to engage in a transaction if he knows or should know that such transaction constitutes direct or indirect loan or extension of credit between the plan and a party in interest. ERISA section 408(b)(1) exempts from this prohibition loans from a plan to parties in interest who are participants and beneficiaries of the plan, provided that certain requirements are satisfied. In final regulations published in the **Federal Register** on July 20, 1989 (54 FR 30520), the Department provided additional guidance on section 408(b)(1)(C), which requires that loans be made in accordance with specific provisions in the plan. This ICR therefore relates to the provisions plan documents must include in order for a plan may make loans to participants. The ICR is scheduled to expire on October 31, 2010.

II. Current Actions

This notice requests public comment on the Department's request for extension of OMB approval of the information collection contained in its final rule at 29 CFR 2550.408b–1. After considering all the responses to this notice, the Department intends to submit an ICR to OMB for continuing approval. The Department is not proposing any changes to the existing

ICR at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Regulation Relating to Loans to Plan Participants and Beneficiaries who are Parties in Interest with Respect to the Plan.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0076.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 1,700.

Responses: 1,700.

Estimated Total Burden Hours: 1.

Estimated Total Burden Cost (Operating and Maintenance): $556,000.

III. Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- 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.*, by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: August 17, 2010.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2010–20798 Filed 8–20–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,993; TA–W–70,993A]

Diebold, Incorporated, Hebron, OH; Diebold, Incorporated, North Canton, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 1, 2010, applicable to workers of Diebold, Incorporated, North Canton, Ohio. The notice was published in the **Federal Register** on May 5, 2010 (75 FR 24750). The notice was corrected on April 23, 2010 to show the correct location of the subject firm should read Hebron, Ohio not North Canton, Ohio which is the headquarters location of the subject firm.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of banking security equipment.

New findings show that worker separations occurred during the relevant time period at the North Canton, Ohio location of Diebold, Incorporated. The North Canton, Ohio location produced banking security equipment and served as the headquarter offices for Diebold, Incorporated.

Accordingly, the Department is amending the certification to include workers of the North Canton, Ohio location of Diebold, Incorporated.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production of banking security equipment to Hungary and China.

The amended notice applicable to TA–W–70,993 is hereby issued as follows:

All workers of Diebold, Incorporated, Hebron, Ohio (TA–W–70,993 and Diebold, Incorporated, North Canton, Ohio (TA–W–70,993A), who became totally or partially separated from employment on or after June 4, 2008, through April 1, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 6th day of August 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–20786 Filed 8–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,591A]

Chrysler Group, LLC Manufacturing Division St. Louis North Plant Including On-Site Leased Workers From American Food, G4S Wackenhut, C R Associates, Syncreon, Robinson Solutions and Dupont Performance Coatings Fenton, MO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 2, 2010, applicable to workers of Chrysler Group, LLC, Manufacturing Division, St. Louis North Plant, including on-site leased workers from American Food, G4S Wackenhut, C R Associates, Syncreon and Robinson Solutions, Fenton, Missouri. The notice was published in the **Federal Register** on June 16, 2010 (75 FR 34177).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The workers develop and produce performance coating solutions for vehicles.

The company reports that workers leased from DuPont Performance Coatings, a wholly-owned subsidiary of E.I. DuPont de Nemours Company, OEM, were employed on-site at the Fenton, Missouri location of Chrysler Group, LLC, Manufacturing Division, St. Louis North Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from DuPont Performance Coatings, a wholly-owned subsidiary of E.I. DuPont de Nemours Company, OEM, working on-site at the Fenton, Missouri location of Chrysler Group, LLC, Manufacturing Division, St. Louis North Plant.

The amended notice applicable to TA–W–73,591A is hereby issued as follows:

All workers of Chrysler Group, LLC, Manufacturing Division, St. Louis Plant North, including on-site leased workers from American Food, G4S Wackenhut, C R Associates, Syncreon, Robinson Solutions, and DuPont Performance Coatings, a wholly owned subsidiary of E.I. DuPont de Nemours Company, OEM, Fenton, Missouri, who became totally or partially separated from employment on or after February 25, 2009, through June 2, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 9th day of August 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–20787 Filed 8–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,758]

BlueScope Buildings North America Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Buttler Manufacturing Company, Laurinburg, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 18, 2010, applicable to workers of BlueScope Buildings North America, Laurinburg, North Carolina. The notice was published in the **Federal Register** on June 7, 2010 (75 FR 32224).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to prefabricated metal building components.

New information shows that some workers separated from employment at BlueScope Buildings North America had their wages reported through a separate unemployment insurance (UI) tax account under the name Buttler Manufacturing Company, a division of BlueScope Buildings North America.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in the production of prefabricated metal building components to Mexico.

The amended notice applicable to TA–W–73,758 is hereby issued as follows:

All workers of BlueScope Buildings North America, including workers whose unemployment insurance (UI) wages are reported through Buttler Manufacturing Company, Laurinburg, North Carolina, who became totally or partially separated from employment on or after March 19, 2009, through May 18, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 11th day of August, 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–20788 Filed 8–20–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *August 2, 2010 through August 6, 2010.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or

directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the Federal Register under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
72,580	Criterion Catalysts & Technologies L.P.	Belmont, WV	October 13, 2008.
73,207	O'Neal Steel, Inc., Leased Workers from Advantage Staffing	Greensboro, NC	December 31, 2008.
73,566	Precision Etchings and Findings, Inc.	Warwick, RI	February 24, 2009.
73,892	Design Ware, American Greetings, Leased Workers Advanced Employment	Kalamazoo, MI	April 5, 2009.
74,179	Thakar Aluminum Corporation	Sandusky, OH	May 27, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
72,954	RBP Chemical Technology, Inc.	Milwaukee, WI	November 24, 2008.
73,083	Viewpointe Archive Services, LLC, On-Site Leased Workers from Atrium Staffing.	Parsippany, NJ	December 11, 2008.
73,124	Suite Simplicity, LLC, Formerly Deco Lav, Inc	Greensboro, NC	December 17, 2008.
73,309	Ceratizit USA, Inc., zCrtsyixit S.A., On-Site Leased Workers from The Callos Company and Adecco.	Derry, PA	January 13, 2009.
73,368	NCI Group, Inc., DBA A&S Building Systems; Leased Workers of Daniel Group.	Rocky Mount, NC	January 25, 2009.
73,483	Insulet Corporation, Leased Workers from John Galt Staffing, GCR Professional Services, etc.	Bedford, MA	February 8, 2009.
73,556	Flextronics America, LLC, Flextronics International USA, On-Site Leased Workers form Aerotek.	Creedmoor, NC	February 23, 2009.
73,606	Leased Workers From Teksystems, Ajilon, and Pomeroy, Working On-Site at Target Corporation, North Campus Rollout Room.	Brooklyn Park, MN	March 1, 2009.
73,734	Purchasingnet, Inc., Research & Development, and General & Administrative, ESW, etc.	Red Bank, NJ	March 16, 2009.
73,891	Emerson Process Management Regulator Technologies, Inc., Emerson Electric Company.	McKinney, TX	April 7, 2009.
73,975	CareFusion 209, Incorporated, Leased Workers from Aerotek and Adecco	Middleton, WI	April 6, 2009.
73,986	AT&T Services, Inc., Information Technology	Bothell, WA	April 19, 2009.
73,991	JBL Incorporated, Harman International Industries, Leased Workers Select Staffing, etc.	Northridge, CA	June 25, 2010.

TA–W No.	Subject firm	Location	Impact date
73,992	BP Solar International, Inc., Subsidiary of BP America International, Inc., Leased Workers of Aerotek, etc.	Frederick, MD	April 23, 2009.
74,038	Tyden Brooks Security Products Group, On-Site Leased Workers from ERG Staffing Service & Express Employment, etc.	Phillipsburg, NJ	April 30, 2009.
74,124	Precision Wire Components, Leased Workers From Aerotek	Tualatin, OR	April 23, 2009.
74,170	Con-way Enterprise Services, Accounting, Fixed Assets and IT Infrastructure Divisions; etc.	Portland, OR	May 28, 2009.
74,172	Toshiba America Consumer Products, Inc., Tennessee Operations Product Return Center ("PRC").	Lebanon, TN	May 28, 2009.
74,187	Fairchild Semiconductor, Leased Workers from NStar Global Services	Mountaintop, PA	June 3, 2009.
74,209	Citicorp Credit Services, Inc. (USA), Risk and Fraud Operations Divisions, Citigroup, Inc.	Tucson, AZ	June 1, 2009.
74,292	Precision Dynamics Corporation	San Fernando, CA	June 14, 2009.
74,299	Anthem Blue Cross and Blue Shield of Maine, Wellpoint, Inc., Leased Workers Iconma, Indecon, Pinnacle, etc.	South Portland, ME	June 24, 2009.
74,382	J.P. Morgan Chase, Troy Telephone Banking	Troy, MI	July 12, 2009.
74,397	Progress Software Corporation, Off-Site Workers Reporting to Bedford, Massachusetts from Arizona, etc.	Bedford, MA	July 12, 2009.
74,398	Progress Software Corporation	El Segundo, CA	July 12, 2009.
74,399	Progress Software Corporation	San Francisco, CA	July 12, 2009.
74,400	Progress Software Corporation	Nashua, NH	July 12, 2009.
74,401	Savvion, A Progress Software Company	Santa Clara, CA	July 12, 2009.
74,402	DataDirect Technologies	Los Gatos, CA	July 12, 2009.
74,403	Progress Software Corporation	Oak Brook, IL	July 12, 2009.
74,404	Progress Software Corporation	Largo, MD	July 12, 2009.
74,405	Progress Software Corporation	New York, NY	July 12, 2009.
74,406	DataDirect Technologies Headquarters	Morrisville, NC	July 12, 2009.
74,407	Progress Software Corporation	Austin, TX	July 12, 2009.
74,408	DataDirect Technologies	Sugar Land, TX	July 12, 2009.
74,409	DataDirect Technologies	Fairfax, VA	July 12, 2009.
74,410	DataDirect Technologies	Norfolk, VA	July 12, 2009.
74,431	Evonik Cyro, LLC, Evonik Industries, On-Site Leased Workers from Manpower.	Sanford, ME	July 22, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
72,988	Matcor Automotive, Inc., On-Site Leased Workers from GSN Staffing, Ameristaff & Express, etc.	Moberly, MO	November 24, 2008.
73,378	General Fasteners Company	Richmond, IN	January 27, 2009.
73,689	General Motors Component Holdings, LLC, General Motors Company; Delphi Corporation, Electronics & Safety Division.	Kokomo, IN	February 15, 2010.
74,130	Eagle Express Trucking, Inc.	Saint Marys, PA	May 20, 2009.
74,205	River Bend Industries, LLC, Leased Workers Firststaff	Fort Smith, AR	May 10, 2009.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,871	Weyerhaeuser Company, iLevel Sales Service Center	Sacramento, CA	April 6, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
73,683	Contour Aerospace Corporation, a division of Vought Aircraft Industries	Everett, WA.	
74,173	Liberty Healthcare Corporation	Bala Cynwyd, PA.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
72,122	The Dial Corporation	St. Louis, MO.	
72,762	Upper Connecticut Valley Hospital Association, Inc.	Colebrook, NH.	
72,949	Western Digital Technologies, Inc., Corporate Headquarters/Hard Drive Development Division.	Lake Forest, CA.	
73,225	Custom Hoists, Inc., Standex International	Hayesville, OH.	
73,579	Consolidated Glass and Mirror Corp., Guardian Industries Corp.	Galax, VA.	
73,629	Plycraft Industries, Inc.	Huntington Beach, CA.	
73,655	Lamson Pipe Company	Erie, PA.	
73,702	Komatsu Latin America Corporation, Komatsu America Corporation	Miami, FL.	
74,297	Aero-Metric, Inc.	Seattle, WA.	
74,355	Dish Network Service L.L.C., McKeesport Dispatch-DNS	McKeesport, PA.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
73,735	Product Action	Dayton, OH.	
74,376	Ellwood Crankshaft & Machine Company	Hermitage, PA.	
74,421	Fairfield Chair Company, Plant #1	Lenoir, NC.	
74,440	Hagemeyer North America, Sonepar USA	Charleston, SC.	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
73,890	Pioneer Press, Ltd	Kaukauna, WI.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
74,153	Freescale Semiconductor, Inc., Quality Division, Leased Workers from Manpower.	Austin, TX.	
74,231	Swets Information Service, Finance Department	Runnemede, NJ.	
74,282	Diebold Incorporated	North Canton, OH.	

I hereby certify that the aforementioned determinations were issued during the period of *August 2, 2010 through August 6, 2010.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Date: August 11, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–20790 Filed 8–20–10; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions,

the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 2, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 2, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington; DC 20210 or to *foiarequest@dol.gov*.

Signed at Washington, DC, this 13th day of August 2010.

Michael Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 8/2/10 and 8/6/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74452	Leisure Arts (State/One-Stop)	Little Rock, AR	08/02/10	07/30/10
74453	REA Magnet Wire Company, Inc. (Workers)	Osceola, AR	08/02/10	07/26/10
74454	LSI Incorporated (Workers)	Fort Collins, CO	08/02/10	07/22/10
74455	Uniboard Fostoria, Incorporated (Company)	Fostoria, OH	08/02/10	07/26/10
74456	Global Recruiters of Boulder (Company)	Boulder, CO	08/02/10	07/19/10
74457	Leach International Esterline Corporation (State/One-Stop)	Buena Park, CA	08/02/10	07/22/10
74458	Smart-Sox, Incorporated (Company)	Thomasville, NC	08/02/10	07/29/10
74459	The Sun News/McClatchy Company (State/One-Stop)	Myrtle Beach, SC	08/02/10	07/28/10
74460	Sing Fai, Inc. (Workers)	San Francisco, CA	08/03/10	07/24/10
74461	Providence Chain Co. (Workers)	Providence, RI	08/03/10	07/30/10
74462	US Airways, Inc. (Worker)	Columbus, OH	08/04/10	07/30/10
74463	Kimble Chase Life Science and Research Products, LLC (Company).	Vineland, NJ	08/04/10	07/14/10
74464	BreconRidge Manufacturing Solutions (Company)	Ogdensburg, NY	08/04/10	07/29/10
74465	Harman Consumer, Inc. (Company)	Northridge, CA	08/04/10	08/02/10
74466	Hewlett Packard (Company)	Palo Alto, CA	08/04/10	06/22/10
74467	Zach System Corporation (Workers)	La Porte, TX	08/04/10	08/03/10
74468	Cameron Compression Systems (Union)	Buffalo, NY	08/04/10	04/20/10
74469	Deloitte Services, LP (State/One-Stop)	Boston, MA	08/04/10	07/29/10
74470	Standard Microsystems Corporation (SMSC) (State/One-Stop).	Hauppaugue, NY	08/04/10	08/02/10
74471	Alumax Service Center (Company)	Riverside, MO	08/04/10	07/15/10
74472	EMC Corporation (State)	Durham, NC	08/04/10	07/30/10
74473	EMC Corporation (State)	Alexandria, VA	08/05/10	07/30/10
74474	EMC Corporation (1) (State/One-Stop)	Berkeley Heights, NJ	08/05/10	07/30/10
74475	EMC Corporation (2) (State/One-Stop)	Berkeley Heights, NJ	08/05/10	07/30/10
74476	EMC Corporation (1) (State/One-Stop)	Colorado Springs, CO	08/05/10	07/30/10
74477	EMC Corporation (2) (State/One-Stop)	Colorado Springs, CO	08/05/10	07/30/10
74478	EMC Corporation (State/One-Stop)	Duluth, GA	08/05/10	07/30/10
74479	EMC Corporation (State/One-Stop)	Dallas, TX	08/05/10	07/30/10
74480	EMC Corporation (State/One-Stop)	White Plains, NY	08/05/10	07/30/10
74481	Diversey, Inc. (Company)	Sturtevant, WI	08/06/10	08/04/10
74482	Airolite, LLC (Company)	Marietta, OH	08/06/10	07/09/10
74483	Wood Group GTS (State/One-Stop)	East Windsor, CT	08/06/10	08/03/10
74484	New York Wire (Company)	Walterboro, SC	08/06/10	08/02/10
74485	Akzo Nobel Nonstick Coatings (Company)	Des Plaines, IL	08/06/10	07/27/10
74486	Precision Dormer, LLC (Company)	Crystal Lake, IL	08/06/10	08/03/10
74487	Aloecorp, Inc. (Company)	Lyford, TX	08/06/10	08/04/10
74488	Computer Sciences Corporation (CSC) (State/One-Stop)	Newark, DE	08/06/10	07/30/10
74489	Warner Chilcott Pharmaceuticals (Workers)	Norwich, NY	08/06/10	08/06/10
74490	Fermer Precision, Inc. (Company)	Ilion, NY	08/06/10	07/23/10
74491	Acme Electric (Company)	Lumberton, NC	08/06/10	07/28/10
74492	Rocky III Investments, LLC (State/One-Stop)	Grand Junction, CO	08/06/10	08/02/10
74493	Accenture, LLC (Workers)	Wilmington, DE	08/06/10	07/26/10
74494	Dyno Nobel, Inc. (State/One-Stop)	Ulster Park, NY	08/06/10	07/28/10
74495	General Electric Grove City (Workers)	Grove City, PA	08/06/10	08/03/10

[FR Doc. 2010–20789 Filed 8–20–10; 8:45 am]
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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,725]

Weather Shield Manufacturing, Inc., Corporate Office, Medford, WI; Notice of Revised Determination on Remand

On February 9, 2010, the U.S. Court of International Trade (USCIT) remanded to the U.S. Department of Labor (Department) for further review, *Former Employees of Weather Shield Manufacturing, Inc.* v. *United States,* Court No. 09–00377.

On December 17, 2008, former workers of Weather Shield Manufacturing, Inc. (subject firm) filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin (subject facility).

The initial investigation revealed that, during the period under investigation, the workers at the subject facility (subject worker group) supported the production of doors and/or windows by providing administrative support functions to various subject firm manufacturing facilities and that there had been a significant number or proportion of workers at the subject facility that were totally or partially separated from employment. However, it was determined that imports of articles like or directly competitive with those produced by the subject firm did not contribute importantly to worker separations at the subject facility and that the subject firm did not shift production to a foreign country. A survey of a sample of the subject firm's declining domestic customers revealed negligible imports of products like or directly competitive with those produced by workers at the subject firm.

The Department issued a negative determination regarding the subject worker group's eligibility to apply for TAA and ATAA on April 29, 2009. The Department's Notice of Determination was published in the **Federal Register** on May 18, 2009 (74 FR 23214).

By application dated May 26, 2009, the petitioning workers requested administrative reconsideration of the Department's negative determination. To support the claim that the subject worker group was import impacted, the petitioners provided additional information regarding the products manufactured at the subject firm and the worker separations occurring throughout all subject firm locations. The petitioners also provided information pertaining to a competitor of the subject firm whose workers had been certified eligible to apply for TAA.

The Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration on June 2, 2009. The Department's Notice was published in the **Federal Register** on June 18, 2009 (74 FR 28956).

During the reconsideration investigation, the Department obtained additional information from the subject firm regarding the petitioners' claims. The Department also surveyed additional declining customers regarding their purchases of articles like or directly competitive with those produced at the subject firm. The reconsideration investigation did not reveal information sufficient to reverse the initial negative determination.

Based on the findings of the reconsideration investigation, the Department concluded that customer imports of articles like or directly competitive with those produced by workers at the subject firm did not contribute importantly to worker separations. The Department issued a Notice of Negative Determination on Reconsideration on July 14, 2009. The Notice was published in the **Federal Register** on July 30, 2009 (74 FR 38048).

The petitioners thereupon filed a complaint to the USCIT. In the complaint to the USCIT, dated January 19, 2010, the Plaintiffs alleged that workers at the subject facility were impacted by increased customer imports of articles like or directly competitive with those produced at the subject firm. The Plaintiffs also requested the Department to investigate all the subject firm locations and product lines manufactured at the production facilities.

On January 19, 2010, Plaintiffs filed a motion to supplement the administrative record before the USCIT. Plaintiffs' motion included additional evidence not considered in Labor's investigation of the subject workers' petition for TAA benefits, including, in particular, information pertaining to competitors of the subject firm whose workers had been certified eligible to apply for TAA and who had overlapping customers with the subject firm. Since a number of these customers had not been contacted in the original investigation, a further review of this information was deemed necessary.

Based on the new information submitted, the Department requested that the USCIT remand the case to the Department to conduct a further investigation. On February 9, 2010, the USCIT granted this request.

For a worker group to be certified for TAA based on increased imports, all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision.

During the remand investigation, the Department obtained information from the subject firm and solicited input from the Plaintiffs. The Department also conducted a more extensive sample customer survey to determine whether or not there were increased customer imports in the relevant period of articles like or directly competitive with doors and/or windows produced at the subject firm and, if so, whether the increased imports contributed importantly to worker group separations.

The expanded sample customer survey conducted during the remand investigation revealed that the surveyed customer purchases from the subject firm declined while imports of doors and/or windows or articles like or directly competitive with those produced at the subject firm increased in the relevant period. The Department surveyed a significant proportion of the subject firm's declining customers regarding import purchases of doors and/or windows in 2007 and 2008, including overlapping customer with competitors identified by petitioners for the first time in their USCIT complaint. Overall, the customers increased import purchases in the period under investigation relative to purchases made from the subject firm.

Based on the findings of the remand investigation, the Department determines that increased imports of articles like or directly competitive with doors and/or windows produced by the subject firm contributed importantly to the subject workers' separation and to the decline in subject firm sales and production.

In accordance with Section 246 the Trade Act of 1974 (26 USC 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to

apply for ATAA. The Department has determined in this case that the group eligibility requirements of Section 246 have been met

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the information obtained during the remand investigation, I determine that increased imports of articles like or directly competitive with doors and/or windows produced by the subject firm contributed to the total separation of a significant number or proportion of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin, who became totally or partially separated from employment on or after December 17, 2007, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of August 2010.

Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–20791 Filed 8–20–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–091)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the inventions described and claimed in U.S. Patent Application No. 09/056,363 and U.S. Patent No. 6,730,498 entitled "Production of Functional Proteins: Balance of Shear Stress and Gravity" to Regenetech, Inc., having its principal place of business in Houston, Texas. The fields of use may be limited to production of biomolecules and growth factors for use in topical applications for cosmetics, topical treatment of burns, scars, stretch marks, acne and joint pain. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, Texas 77058. (281) 244–7148; Fax (281) 483–6939.

FOR FURTHER INFORMATION CONTACT: Theodore U. Ro, Intellectual Property Attorney, Office of Chief Counsel, NASA Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, Texas 77058. (281) 244–7148; Fax (281) 483–6939. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/*.

Dated: August 17, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–20822 Filed 8–20–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–090)]

NASA International Space Station Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NASA International Space Station Advisory Committee. The purpose of the meeting is to assess NASA and Roscosmos continuing plans to support a six-person crew aboard the International Space Station, including transportation, crew rotation, training, and micro meteoroid and orbital debris shielding.

DATES: September 10, 2010, 11–12 p.m. Eastern Daylight Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Room 7H45, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. J. Donald Miller, Office of International and Interagency Relations, (202) 358–1527, National Aeronautics and Space Administration, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. This meeting will be open to the public up to the seating capacity of the room. Five seats will be reserved for members of the press. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than ten working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. Send identifying information to Dr. Miller via e-mail at *j.d.miller@nasa.gov* or by telephone at (202) 358–1527. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Dr. Miller via e-mail at *j.d.miller@nasa.gov* or by telephone at (202) 358–1527.

Dated: August 17, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–20761 Filed 8–20–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–092)]

NASA Advisory Council; Space Operations Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC) Space Operations Committee.

DATES: Monday, September 13, 2010, 1 p.m.—5 p.m. local time.

Tuesday, September 14, 2010, 8 a.m.–12 p.m. local time.

ADDRESSES: NASA Johnson Space Center, Houston, TX.

FOR FURTHER INFORMATION CONTACT: Mr. Jacob Keaton, NAC Space Operations Committee Executive Secretary, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, 202/358–1507, *jacob.keaton@nasa.gov*. All members of the public wishing to attend must contact Mr. Keaton no later than 12 p.m. EDT on September 10, 2010, for security access and meeting location information for the Johnson Space Center.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—*Monday, September 13:* Commercial Crew and Vehicle Design, Micrometeoroid Orbital Debris and Radiation Protection, International Space Station and Space Shuttle Program Update.

—*Tuesday, September 14:* Recommendation Preparation, Open Discussion with the NASA Advisory Council Commercial Space Committee and NASA officials.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: August 17, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–20821 Filed 8–20–10; 8:45 am]

BILLING CODE P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Notice of Proposed Information Collection Requests: Public Libraries Survey, FY 2011–2013

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Service ("IMLS") 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 (44 U.S.C. Chapter 35). This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning the continuance of the Public Libraries Survey for Fiscal Years 2011–2013.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 20, 2010.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the 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.

ADDRESSES: Send comments to Kim A. Miller, Management Analyst, Office of Policy, Planning, Research, and Communication, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Ms. Miller can be reached by Telephone: 202–653–4762, Fax: 202–653–4600, or by e-mail at *kmiller@imls.gov*, or by teletype (TTY/TDD) for persons with hearing difficulty at 202/653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency and is the primary source of federal support for the Nation's 123,000 libraries and 17,500 museums. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. IMLS is responsible for identifying national needs for, and trends of, museum and library services funded by IMLS; reporting on the impact and effectiveness of programs conducted with funds made available by IMLS in addressing such needs; and identifying, and disseminating information on, the best practices of such programs. (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

II. Current Actions

Pursuant to Public Law 107–279, this Public Libraries Survey collects annual descriptive data on the universe of public libraries in the U.S. and the Outlying Areas. Information such as public service hours per year, circulation of library books, number of librarians, population of legal service area, expenditures for library collection, staff salary data, and access to technology, *etc.*, would be collected. The Public Libraries Survey has been conducted by the Institute of Museum and Library Services under the clearance number 3137–0074, which expires November 30, 2010.

Agency: Institute of Museum and Library Services.

Title: Public Libraries Survey, 2011–2013.

OMB Number: 3137–0074.

Agency Number: 3137.

Affected Public: State and local governments, State library agencies, and public libraries.

Number of Respondents: 55.

Note: 55 is the number of State Library Administrative Agencies (StLAs) that are responsible for the collection of this information and for reporting it to IMLS. In gathering this information, the StLAs will request that their sub-entities (ex. public libraries in their respective States and Outlying Areas) provide information to the respective StLA. As the number of sub-entities and questions varies from StLA to StLA, it is difficult to assess the exact number of burden hours and costs.

Frequency: Annually.

Burden Hours per Respondent: 85.7.

Total Burden Hours: 4,541.

Total Annualized Capital/Startup Costs: N/A.

Total Annual Costs: $119,428.

Contact: Kim A. Miller, Management Analyst, Office of Policy, Planning, Research, and Communication, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Ms. Miller can be reached by Telephone: 202–653–4762, Fax: 202–653–4762, or by e-mail at *kmiller@imls.gov*.

Dated: August 18, 2010.

Kim A. Miller,

Management Analyst, Office of Policy, Planning, Research, and Communication.

[FR Doc. 2010–20882 Filed 8–20–10; 8:45 am]

BILLING CODE 7036–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, September 9, 2010 at 10 a.m. to 11:30 a.m., and continuing, as needed, on weekdays during regular Commission business hours, through Friday, October 1, 2010.

PLACE: Commission conference room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Decision in Docket No. R2010–4, Rate Adjustment due to Extraordinary or Exceptional Circumstances.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, at *stephen.sharfman@prc.gov* or 202–789–6820.

Dated: August 19, 2010.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–21013 Filed 8–19–10; 4:15 pm]

BILLING CODE 7710–FW–S

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 25, 2010 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 adopt changes to the federal proxy and other rules to facilitate director nominations by shareholders.

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 18, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20927 Filed 8–19–10; 11:15 am]

BILLING CODE 8010–01–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 a Closed Meeting on Thursday, August 26, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, August 26, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

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 19, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–21000 Filed 8–19–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–44; File No. S7–17–10]

Privacy Act of 1974: Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice to establish systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the U.S. Securities and Exchange Commission ("Commission" or "SEC") gives notice of a proposal to establish the following two new Privacy Act systems of records: "Municipal Advisor Records (SEC–61)" and "Correspondence Files Pertaining to Municipal Advisors; Municipal Advisor Logs (SEC–62)".

DATES: The proposed systems will become effective October 4, 2010 unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before September 22, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–17–10 on the subject line.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, U.S.

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. All submissions should refer to File Number S7–17–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Barbara A. Stance, Chief Privacy Officer, Office of Information Technology, 202–551–7209.

SUPPLEMENTARY INFORMATION: The Commission gives notice of the proposed establishment of new systems of records as follows: "Municipal Advisor Records (SEC–61)," which contains records relating to Municipal Advisor applicants, registrants, and their associated or related persons, and "Correspondence Files Pertaining to Municipal Advisors; Municipal Advisor Logs (SEC–62)", which contains records of correspondence, inquiries, requests, comments or other communications submitted to the Commission or SEC staff relating to Municipal Advisors.

The Commission has submitted a report of the new systems of records to the appropriate Congressional committees and to the Director of the Office of Management and Budget ("OMB") as required by 5 U.S.C. 552a(r) (Privacy Act of 1974) and guidelines issued by OMB on December 12, 2000 (65 FR 77677).

Accordingly, the Commission is proposing two new systems of records to read as follows:

SEC–61

SYSTEM NAME:

Municipal Advisor Records.

SYSTEM LOCATION:

U.S. Securities and Exchange Commission ("Commission" or "SEC") 100 F Street, NE., Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records covers applicants for registration or exemption from registration as Municipal Advisors, current and former registrants, and individuals having a relationship with or a transaction with a registrant including: partners, officers, directors, associated persons, control persons, control affiliates, employees, owners, principal shareholders, and other related persons or entities; and their representatives or counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Both electronic and paper records in this system may include: name, business address, residential address (for sole proprietor only), telephone/cellular/facsimile number, e-mail address, Web site or Internet address, IRS employer identification number, IA SEC File Number, Broker Dealer SEC File Number, CRD Number, areas of business, other SEC registrations, SRO memberships, and related information; past and present employment; disciplinary history; business relationships; and similar information relating to the categories of individuals covered by the system. Paper records may include, but are not limited to, application and other forms, records, or documents relating to registration; letters, facsimiles, imaged documents, and other forms of written communication; and related documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 975(a), Pub. L. 111–203 (2010); 15 U.S.C. 78a *et seq.*; 80b-1 *et seq.*; and 17 CFR 202.1 to 202.10.

PURPOSE(S):

The records are used by authorized staff to review and process applications for registration or exemption as Municipal Advisors; with respect to the regulation and oversight of registrations and registrants and their associated or related persons as stated in the section relating to Categories of Individuals Covered by the System; to maintain and disclose in accordance with statutory or regulatory provisions records relating to such applications, registrations, registrants, and associated or related persons; and to implement and administer the federal securities laws and rules.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.

5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public

Company Accounting Oversight Board) for investigations or possible disciplinary action.

8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100–900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100–1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.

12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a).

15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To members of Congress, the General Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

23. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

Records may be retrieved by any of the following: Name, address, receipt date, entity name, registration number, telephone/cellular/facsimile number, email or Internet address, subject matter, or other indexed information.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. The records are kept in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Apart from information publicly disclosed pursuant to statutory or regulatory provisions, access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security. Contractors and other recipients providing services to the Commission are contractually obligated to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGERS AND ADDRESSES:

Assistant Director, Division of Trading and Markets, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7561.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information collected is received primarily from applicants for registration or exemption from registration, current and former registrants, and partners, officers, directors, associated persons, control persons, control affiliates, employees, owners, principal shareholders, other related persons or entities, members of the public, and their representatives or counsel, via form, correspondence, or other written or verbal forms of communication, including without limitation telephone calls, emails and other forms of electronic communication, letters, or facsimiles to the Commission and SEC staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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SYSTEM NAMES:

Correspondence Files Pertaining to Municipal Advisors; Municipal Advisor Logs.

SYSTEM LOCATION:

U.S. Securities and Exchange Commission ("Commission" or "SEC") 100 F Street, NE., Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons applying for registration or exemption from registration as a Municipal Advisor, persons currently or formerly registered with the Commission as a Municipal Advisor, and their partners, officers, directors, associated persons, control persons, control affiliates, employees, owners, principal shareholders, other related persons, and their representatives or counsel; and representatives of regulated entities and their counsel, members of the public, representatives of other governmental agencies or Congress, and others who submit correspondence, inquiries, information, comments, or other forms of communication to the Commission or SEC staff relating to Municipal Advisors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Both electronic and paper records in this system may include information concerning an individual's activities, transactions, and disciplinary history as or pertaining to, or relationships with, a Municipal Advisor; the name of the correspondent or inquirer/requester/commenter/communicant or their representative; the name, residential and/or business address, telephone/cellular/facsimile number, and email or Internet address of the correspondent or entity; the subject of the correspondence, inquiry/request/comment or communication; the date of the correspondence, inquiry/request/comment or communication; and the Commission or SEC staff response provided, or other disposition, on a formal or informal basis. Paper records may include, but are not limited to, letters, facsimiles, imaged documents, other written forms of communication, and related documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 975(a), Public Law 111–203 (2010); 15 U.S.C. 78a *et seq.*; 80b-1 *et seq.*; and 17 CFR 202.1 to 202.10.

PURPOSE(S):

The records are used by authorized SEC staff to track, process, respond to, and maintain documentation of correspondence, inquiries/requests/comments, communications, and related information from members of the public, including industry representatives, counsel, and others, relating to Municipal Advisors; to document Commission or SEC staff responses on a formal or informal basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.

5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public

Company Accounting Oversight Board) for investigations or possible disciplinary action.

8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100–900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100–1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.

12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a).

15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To members of Congress, the General Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

23. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

Records may be retrieved by any of the following: name, receipt date, entity name, registration number, telephone/cellular/facsimile number, email or Internet address, subject matter, or other indexed information.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. The records are kept in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security. Contractors and other recipients providing services to the Commission are contractually obligated to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGERS AND ADDRESSES:

Assistant Director, Division of Trading and Markets, U.S. Securities

and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7561.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information collected is received from individuals primarily through correspondence or other written or verbal forms of communication, including without limitation telephone calls, emails and other forms of electronic communication, letters, or facsimiles to the Commission and SEC staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By the Commission.

Dated: August 19, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–20999 Filed 8–20–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62735; File No. SR–NASDAQ–2010–101]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Rule 4770 in Its Entirety and To Eliminate a Related Reference From the Rules

August 17, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to delete Rule 4770 in its entirety from the NASDAQ rulebook and to also eliminate a reference to Rule 4770 from Rule 4751(f)(13). The text of the proposed rule change is below. Proposed new language is *italicized* and proposed deletions are in [brackets].

* * * * *

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a)— (e) No change.

(f) The term "Order Type" shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)—(12) No change.

(13) "Collared Orders" are all Unpriced Orders except: (1) Market On Open Orders as defined in Rule 4752; (2) Market On Close Orders as defined in Rule 4754; *or* (3) Unpriced Orders included by the System in any Nasdaq Halt Cross or Nasdaq Imbalance Cross, each as defined in Rule 4753[; or (4) Unpriced Orders that are Reference Price Cross Orders as defined in Rule 4770]. Any portion of a Collared Order that would execute (either on NASDAQ or when routed to another market center) at a price more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.

(g)—(i) No change.

* * * * *

4770. *Reserved*[Nasdaq Crossing Network

(a) Definitions. For the purposes of this rule the term:

(1) "Nasdaq Reference Price Cross" shall mean the process for executing orders at a predetermined reference price at a randomly selected point in time during a five-second trading window beginning at 10:45 a.m., 12:45 p.m. and 2:45 p.m. Eastern Time during the regular hours session and at 4:30 p.m. during the after hours session.

(2) "Nasdaq Reference Price Cross eligible securities" shall mean Nasdaq-listed securities and securities listed on the New York Stock Exchange, the American Stock Exchange or a regional exchange.

(3) (A) "Reference Price Cross Order" or "RPC" shall mean a market or limit order to buy or sell in Nasdaq Reference Price eligible securities that may be executed only during a Nasdaq Reference Price Cross. RPC orders shall not be displayed and must be designated with a time-in-force value to participate either:

(i) in the next scheduled regular hours cross with unexecuted shares being immediately canceled back to the market participant after that cross (NXT);

(ii) in all remaining crosses during the trading day with unexecuted shares being immediately canceled back to the market participant after the final regular hours cross (REG); or

(iii) in all remaining crosses in the current day with unexecuted shares immediately canceled back to the market participant after the after hours cross (ALX).

(B) Starting at 7:30 a.m. Eastern Time until the time of the last after hours session Reference Price Cross, participants may enter, cancel or correct RPC orders, but such orders shall not be available for execution until the next eligible Reference Price Cross. RPC orders must be entered in round lots with a minimum size of one round lot and may designate a minimum acceptable execution quantity. All RPC orders must be available for automatic execution.

(b) Processing of Nasdaq Reference Price Cross.

(1) Each Nasdaq Reference Price Cross shall occur during the regular hours session or the after hours session window commencing at such times as may be designated by Nasdaq upon prior notice to market participants.

(2) Nasdaq Reference Price Crosses that occur during the regular hours session shall be executed at the midpoint of the national best bid and offer, trade reported without identifying the contra party, and disseminated via the consolidated tape.

(3) Nasdaq Reference Price Crosses that occur during the after hours session shall execute at the Nasdaq Official Closing Price for Nasdaq-listed securities or at the official closing price of the primary market for securities listed on the New York Stock Exchange, the American Stock Exchange or a regional exchange, shall be trade reported without identifying the contra party, and disseminated via the consolidated tape.

(4) RPC orders will be allocated on a pro-rata basis, such that shares will be allocated pro-rata in round lots to eligible orders based on the original size of the order. If additional shares remain after the initial pro-rata allocation, those shares will continue to be allocated pro-rata to eligible orders until a number of round lots remain that is less than the number of eligible orders. Any remaining shares will be allocated to the order which has designated the smallest minimum acceptable execution quantity. If more than one such order exists, any remaining shares will be allocated to the oldest eligible order. If the allocation to an eligible order would be less than the minimum acceptable execution quantity for that order, the order shall not be eligible for execution in that cross.

(5) If the reference price described in subparagraph (3) above is outside the benchmarks established by Nasdaq by a threshold amount at the time an after hours cross is scheduled to occur, the Nasdaq Reference Price Cross shall not occur for that security. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(6) If the national best bid and offer is crossed at the time of a Reference Price Cross during the regular hours session, the cross shall be delayed for up to five minutes beyond the time the Reference Price Cross was scheduled to occur and shall execute at the midpoint of the national best bid and offer when the quote becomes uncrossed. In the event the quote remains crossed beyond five minutes after the time of the scheduled Reference Price Cross, the cross will not occur and unexecuted NXT orders shall be returned to market participants.

(7) If the national best bid and offer is locked at the time of a Reference Price Cross during the regular hours session, the cross shall execute at the lock price.

(8) If trading in a security is halted for regulatory or other reasons at the time a cross is scheduled to occur, the cross will not occur and all unexecuted NXT orders shall be returned to market participants.]

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.com*, on the Commission's Web site at *http://www.sec.gov*, at the Exchange, and at the Commission's Public Reference Room. A copy of this filing is available on the Exchange's Web site at *http://www.nasdaq.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to eliminate Rule 4770 in its entirety. Rule 4770 sets forth the rules applicable to the Nasdaq Crossing Network. The Commission approved the Nasdaq Crossing Network on July 5, 2006.[3] The Nasdaq Crossing Network provides an execution option to market participants trading in NASDAQ and other exchange-listed securities that facilitates the execution of trades quickly and anonymously. The Nasdaq Crossing Network executes the Nasdaq Reference Price Cross, an automated and random matching mechanism, at certain pre-determined points during the day. All eligible orders for the Nasdaq Reference Price Crosses are executed in accordance with a predetermined algorithm at the NBBO midpoint on a pro-rata basis and at the NOCP or Primary Market Close, as applicable, for post-close cross executions. The likelihood that a participant will be able to execute all or some of its orders in the Nasdaq Reference Price Cross is directly related to the number of participants acting as counterparties in the cross at any one time. NASDAQ notes that there is light participation in the Nasdaq Reference Price Cross, and is therefore proposing to cease offering the cross and to remove Rule 4770 from NASDAQ's rules. NASDAQ is also eliminating reference to Rule 4770 from Rule 4751(f)(13).

2. Statutory Basis

NASDAQ believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general and with Section 6(b)(5) of the Act,[5] in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is consistent with these requirements in that NASDAQ has determined that it will eliminate an automated crossing mechanism based on low usage and lack of customer demand, which negate its usefulness in facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b–4 thereunder, in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

NASDAQ believes that the proposed rule change will eliminate a little-used crossing process from NASDAQ's rules, which, because of the low number of participants, does not benefit the price-discovery process and overall market confidence in any material manner. NASDAQ will remove Rule 4770 from its rules effective September 13, 2010.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ–2010–101 on the subject line.

[3] Securities Exchange Act Release No. 54248 (July 31, 2006), 71 FR 44738 (August 7, 2006) (SR–NASDAQ–2006–019). Prior to the effective date of NASDAQ's operation as an exchange for NASDAQ-listed securities, the rule governing the Nasdaq Crossing Network had been approved as an NASD rule (NASD Rule 4716). Securities Exchange Act Release No. 54101 (July 5, 2006), 71 FR 39382 (July 12, 2006) (SR–NASD–2005–140).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2010–101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2010–101 and should be submitted on or before September 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20818 Filed 8–20–10; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62736; File No. SR–NASDAQ–2010–100]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Regarding Routing to an Affiliated Exchange

August 17, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 6, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing a rule change to amend Rule 4751 to modify the restriction on routing of Directed Orders to a facility of an exchange that is an affiliate of NASDAQ. The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASDAQ OMX Group, Inc. ("NASDAQ OMX"), a Delaware corporation, owns three U.S. registered securities exchanges—NASDAQ, NASDAQ OMX PHLX, Inc. ("PHLX") and NASDAQ OMX BX, Inc. ("BX"). In addition, NASDAQ OMX currently indirectly owns Nasdaq Execution Services, LLC ("NES"), a registered broker-dealer and a member of PHLX. Thus, NES is an affiliate of each of NASDAQ, PHLX and BX.

PHLX has proposed to launch NASDAQ OMX PSX ("PSX")[3] as a new platform for trading NMS stocks (as defined in Rule 600 under Regulation NMS).[4] Although PSX will not route to other market centers, PSX will receive orders routed to it by other market centers, including NASDAQ. In this respect, PSX will be similar to the NASDAQ OMX BX Equities System, which does not currently route orders to other venues.

NES is the approved outbound routing facility of NASDAQ for cash equities, providing outbound routing from NASDAQ to other market centers. NES does not provide inbound routing to NASDAQ. The acquisition of NES by NASDAQ OMX was approved by the Commission in 2004 and 2005[5] and the rules under which NES currently routes orders from NASDAQ to other market centers were approved initially by the Commission in 2006 and have been amended on numerous occasions since then.[6] Rules 4751 and 4758 establish the conditions under which NASDAQ is permitted to own and operate NES in its

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62519 (July 16, 2010), 75 FR 43497 (July 26, 2010) (SR–PHLX–2010–79) ("PSX Proposal").

[4] 17 CFR 242.600.

[5] *See* Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR–NASD–2005–128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System).

[6] *See* Securities Exchange Act Release Nos. 61682 (March 10, 2010), 75 FR 12592 (March 16, 2010) (SR–NASDAQ–2010–030); 61460 (February 1, 2010), 75 FR 6077 (February 5, 2010) (SR–NASDAQ–2010–018); 60570 (August 26, 2009), 74 FR 45504 (September 2, 2009) (SR–NASDAQ–2009–079); 60039 (June 3, 2009), 74 FR 27365 (June 9, 2009) (SR–NASDAQ–2009–050); 59875 (May 6, 2009), 74 FR 22794 (May 14, 2009) (SR–NASDAQ–2009–043); 59807 (April 21, 2009), 74 FR 19251 (April 28, 2009) (SR–NASDAQ–2009–036); 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR–NASDAQ–2008–098); 58752 (October 8, 2008), 73 FR 61181 (October 15, 2008) (SR–NASDAQ–2008–079); 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR–NASDAQ–2008–061); 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR–NASDAQ–2008–054); 56708 (October 26, 2007), 72 FR 61925 (November 1, 2007) (SR–NASDAQ–2007–078); 56867 (November 29, 2007), 72 FR 69263 (December 7, 2007) (SR–NASDAQ–2007–065); 55335 (February 23, 2007), 72 FR 9369 (March 1, 2007) (SR–NASDAQ–2007–005); 54613 (October 17, 2006), 71 FR 62325 (October 24, 2006) (SR–NASDAQ 2006–043); 54271 (August 3, 2006), 71 FR 45876 (August 10, 2006) (SR–NASDAQ–2006–027); and 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001).

capacity as a facility of NASDAQ that routes orders from NASDAQ to other market centers. The conditions include requirements that: (1) NES is operated as a facility of NASDAQ; (2) NES will not engage in any business other than: (i) as an outbound router for NASDAQ and (ii) any other activities it may engage in as approved by the Commission; (3) for purposes of Commission Rule 17d–1, the designated examining authority of NES is a self-regulatory organization unaffiliated with NASDAQ; (4) use of NES to route orders to other market centers is optional;[7] and (5) NASDAQ will not route orders to an affiliated exchange, such as PHLX, unless they check the NASDAQ book prior to routing.

The Commission has approved NES's affiliation with PHLX subject to the conditions that: (1) NES remains a facility of NASDAQ; (2) use of NES's routing function by NASDAQ members continues to be optional; (3) NES does not provide routing of orders to PHLX or any trading facilities thereof, unless such orders first attempt to access any liquidity on the NASDAQ book; and (4) for purposes of Commission Rule 17d–1, the designated examining authority of NES is a self-regulatory organization unaffiliated with NASDAQ.[8]

NASDAQ is proposing that, upon the resumption of cash equity trading by PHLX, NES, in its operation as a facility of NASDAQ, be permitted to route all orders, including Directed Orders, to PSX without checking the NASDAQ book prior to routing. Directed Orders are orders that route directly to other exchanges on an immediate-or-cancel basis without first checking the NASDAQ book for liquidity.[9] In order to modify the conditions regarding the operation of NES and allow NES to route Directed Orders to PSX, NASDAQ is proposing to modify the restriction in Rule 4751(f)(9) that prohibits the routing of Directed Orders to a facility of an exchange that is an affiliate of NASDAQ. Under the proposed rule change, inbound routing of Directed Orders to the NASDAQ OMX PSX facility of PHLX would be permitted.

The Commission has previously noted concerns about potential informational advantages and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members.[10] In order to address the concerns identified by the Commission regarding the potential for informational advantages favoring NES vis-à-vis other non-affiliated members of BX, NASDAQ previously adopted Rule 4758(b)(8) to provide that NES shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between NASDAQ and its facilities (including NES) and any other entity (including PHLX).[11]

In connection with the proposed launch of PSX, PHLX has proposed a new rule and made certain undertakings intended to manage the flow of confidential and proprietary information between NES and PHLX and to minimize potential conflicts of interest.[12] PHLX's proposed Rule 985(c)(2) will provide:

> The NASDAQ OMX Group, Inc., which owns Nasdaq Execution Services, LLC and the Exchange, shall establish and maintain procedures and internal controls reasonably designed to ensure that Nasdaq Execution Services, LLC does not develop or implement changes to its system on the basis of non-public information regarding planned changes to the Exchange's systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated exchange members in connection with the provision of inbound routing to the Exchange.

Pursuant to the new rule, PHLX has proposed to allow PSX to receive inbound routed orders for a twelve-month pilot period.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Section 6(b)(5) of the Act,[14] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would permit inbound routing of Directed Orders and other orders to PHLX from its affiliate NES while minimizing the potential for conflicts of interest and informational advantages involved where a member firm is affiliated with an exchange to which it is routing orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

At any time within the 60-day period beginning on the date of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[7] Because only NASDAQ members may enter orders into NASDAQ, it also follows that routing by NES is available only to NASDAQ members.

[8] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31).

[9] Rules 4751 and 4755 provide for routing of "directed orders" to automated market centers other than NASDAQ on an "immediate-or-cancel" basis. Such directed orders may be designated as intermarket sweep orders ("ISOs"), which may be executed by the receiving venue based on the representation of the market participant that it has routed to all superior protected quotations, or not so designated, in which case the orders will execute only if their execution would not result in a trade-through.

[10] *See e.g.*, Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR–NASDAQ–2008–098) ("BX Order"); 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (SR–NYSEArca-2008–90) ("NYSE Arca Order"); 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (SR–NYSE–2008–76) ("NYSE Order"); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62) ("NYSE Alternext US Order").

[11] BX Order, *supra* n. 10.

[12] PSX Proposal, *supra* n. 3.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–100 and should be submitted on or before September 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20820 Filed 8–20–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62737; File No. SR–NYSEArca–2010–64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Relating to Listing of the Wilshire Micro-Cap ETF

August 17, 2010.

I. Introduction

On July 1, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the Wilshire Micro-Cap ETF. The proposed rule change was published for comment in the **Federal Register** on July 15, 2010.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Wilshire Micro-Cap ETF (the "Fund")[4] under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units ("Units").[5] The Fund is a series of the Claymore Exchange-Traded Fund Trust.

The Fund seeks investment results that correspond generally to the performance, before fees and expenses, of the Wilshire US Micro-Cap Index℠ ("Index"). The Index is designed to represent micro-sized companies and is a subset of the Wilshire 5000 Total Market Index℠ (the "Wilshire 5000"). The Index represents a float-adjusted, market capitalization-weighted index of the issues ranked below 2500 by market capitalization of the Wilshire 5000. As of March 31, 2010, the Index was comprised of approximately 1,564 securities of micro-capitalization companies.

The Exchange represents that: (i) Except for Commentaries .01(a)(A)(1)[6] and .01(a)(A)(5)[7] to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Fund currently satisfy all of the other generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (ii) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares; and (iii) the Trust is required to comply with Rule 10A–3[8] under the Act for the initial and continued listing of the Shares. Additionally, the Exchange represents that the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Index and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.[9]

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62471 (July 8, 2010), 75 FR 41252 ("Notice").

[4] *See* the Claymore Exchange-Traded Fund Trust's registration statement on Form N–1A, dated May 18, 2010 (File Nos. 333–134551; 811–21906) ("Registration Statement").

[5] An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Equities Rule 5.2(j)(3)(A).

[6] Commentary .01(a)(A)(1) to NYSE Arca Equities Rule 5.2(j)(3) provides that component stocks (excluding Units and securities defined in Section 2 of NYSE Arca Equities Rule 8, collectively, "Derivative Securities Products") that in the aggregate account for at least 90% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum market value of at least $75 million. The Exchange has represented that, as of April 21, 2010, 76.93% of the weight of the Index components had a market capitalization greater than $75 million.

[7] Commentary .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3) provides that all securities in the index or portfolio shall be US Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act. The Exchange has represented that, as of April 21, 2010, 201 of approximately 1,564 components in the Index, accounting for approximately 12.8% of the total stocks in the Index and approximately 3.7% of the Index weight, were non-NMS stocks that trade either on the OTC Bulletin Board or the Pink OTC Markets.

[8] 17 CFR 240.10A–3.

[9] *See, e.g.*, Securities Exchange Act Release Nos. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

Detailed descriptions of the Fund, the Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*http://www.claymore.com*), as applicable.[10]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

NYSE Arca Equities Rule 5.2(j)(3) permits the Exchange to consider qualifying Units for listing and trading pursuant to Rule 19b–4(e) under the Act. Commentary .01(a)(A) of Rule 5.2(j)(3) sets forth the generic listing requirements applicable to Units based on U.S. indexes or portfolios.[13] These generic listing standards are designed to ensure that the securities composing the indexes and portfolios underlying the Units are well capitalized and actively traded, and serve to prevent fraudulent and manipulative acts.[14] As discussed above, the Shares do not qualify for generic listing under the Exchange's rule because the Index does not meet the criteria set forth in Commentaries .01(a)(A)(1) and .01(a)(A)(5) of NYSE Arca Equities Rule 5.2(j)(3) applicable to Units based on U.S. indexes or portfolios.[15]

The Commission believes that the listing and trading of the Shares is consistent with the Act. The Shares currently satisfy all but two of the generic listing standards under the rule, and the Commission believes that the composition of the Index, despite failing to satisfy the requirements of Commentaries .01(a)(A)(1) and .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3), does not raise any regulatory concerns. The capitalization criterion of Commentary .01(a)(A)(1), together with the liquidity requirement applicable to the Index components, are designed to prevent fraudulent or manipulative acts.[16] The Commission believes that the Index should not be susceptible to manipulation in light of the characteristics of the Index components when viewed as a whole. The generic listing requirement that all securities in the Index be NMS Stocks is designed to ensure that listed Units are not used as surrogates for trading in unregistered securities.[17] The Commission believes that the Shares will not serve this function because non-NMS stocks account for only approximately 3.7% of the Index weight.

In addition, the Commission notes that it has not received any comments regarding the proposed rule change.

IV. Conclusion

For the forgoing reasons, the Commission believes that the Exchange's proposal to list and trade the Shares is consistent with the Act. This order is based on the Exchange's representations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSEArca–2010–64) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20819 Filed 8–20–10; 8:45 am]

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[10] *See also* Notice, *supra*, note 3.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] In addition to the requirements set forth in Commentaries .01(a)(A)(1) and .01(a)(A)(5) discussed above, Rule 5.2(j)(3) also provides, among other things, that (i) the component stocks (excluding Derivative Securities Products) representing at least 70% of the weight of the index or portfolio (excluding such Derivative Securities Products) must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares, or minimum notional monthly trading volume of $25 million, (ii) the most heavily weighted component stock (excluding Derivative Securities Products) in an underlying index or portfolio cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks (excluding Derivative Securities Products) cannot together exceed 65% of the weight of the index or portfolio, and (iii) the index or portfolio must include a minimum of 13 stocks. *See* Commentaries .01(a)(A)(2), .01(a)(A)(3) and .01(a)(A)(4) to NYSE Arca Equities Rule 5.2(j)(3).

[14] *See* Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14).

[15] *See* notes 6 and 7, *supra*.

[16] *See* Securities Exchange Act Release No. 44551, *supra* note 14, 66 FR at 37719.

[17] *See* Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571, 19576 (April 18, 2007) (SR–NYSEArca–2006–86).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62734; File No. SR–MSRB–2010–06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change To Establish a Subscription To the Information Collected by the MSRB's Short-term Obligation Rate Transparency ("SHORT") System

August 17, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2010, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change to establish a subscription to the information collected by the MSRB's Short-term Obligation Rate Transparency ("SHORT") System. The MSRB has requested that the proposed rule change be made effective on September 30, 2010.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org*, at the MSRB's principal office, and at the Commission's Public Reference Room. If approved, the rule text for the Short-term Obligation Rate Transparency Subscription Service would be available on the MSRB Web site at *http://www.msrb.org/Rules-and-Interpretations.aspx* under the heading Information Facilities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The SHORT System is a facility of the MSRB for the collection and dissemination of information about securities bearing interest at short-term rates. Currently, these securities consist of Auction Rate Securities ("ARS") and Variable Rate Demand Obligations ("VRDOs"). The proposed rule change consists of a proposal to establish a subscription to the information collected by the SHORT System. The data stream subscription would be provided through a Web service and would be made available for an annual fee of $10,000.[3]

Information disseminated from the SHORT System also is posted to the MSRB's Electronic Municipal Market Access (EMMA) Web portal pursuant to the EMMA short-term obligation rate transparency service. Such information would be made available to subscribers simultaneously with the availability of such information to the EMMA Web portal. The subscription service would make the information collected by the SHORT System available to market participants for re-dissemination and for use in creating value-added products and services. Such re-dissemination and third-party use would provide market participants, including investors and the general public, additional avenues for obtaining the information collected by the SHORT System and would make additional tools available for making well-informed investment decisions.

Data elements with respect to the SHORT subscription service that would be provided through the data stream would be set forth in the SHORT System Subscriber Manual posted on the MSRB Web site. The SHORT System Subscriber Manual would provide a complete, up-to-date listing of all data elements made available through the SHORT subscription service, including any additions, deletions or modifications to disseminated data elements, detailed definitions of each data element, specific data format information, and information about technical data elements to support transmission and data-integrity processes between the SHORT System and subscribers.

Subscriptions would be provided through computer-to-computer data streams utilizing XML files for data. Appropriate schemas and other technical specifications for accessing the Web services through which the data stream will be provided would be set forth in the SHORT System Subscriber Manual posted on the MSRB Web site.

The MSRB would make the SHORT subscription service available on an equal and non-discriminatory basis. Subscribers would be subject to all of the terms of the subscription agreement to be entered into between the MSRB and each subscriber, including proprietary rights of third parties in information provided by such third parties that is made available through the subscription. The MSRB would not be responsible for the content of the information submitted by submitters that is distributed to subscribers of the SHORT subscription service.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[4] which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. The SHORT subscription service would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The subscription service would make the information collected by the SHORT System available to market participants for re-dissemination and for use in creating value-added products and services. Such re-dissemination and third-party use would provide market participants, including investors and the general public, additional avenues for obtaining the information collected by the SHORT System and would make additional tools available for making well-informed investment decisions. Broad access to the information collected by the SHORT System, in addition to the public access through the EMMA Web portal, should further assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about Auction Rate Securities and Variable Rate Demand Obligations.

Furthermore, broader re-dissemination and third-party use of the information collected by the SHORT System should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities (including any changes thereto).

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would make the information collected by the SHORT System available to all persons on an equal and non-discriminatory basis. The information provided through the subscription service would be available to all subscribers simultaneously with the availability of the information through the EMMA Web portal. In addition to making the information available for free on the EMMA Web portal to all members of the public, the MSRB would make the information collected by the SHORT System available by subscription on an equal and non-discriminatory basis without imposing restrictions on subscribers from, or imposing additional charges on subscribers for, re-disseminating such information or otherwise adding value-added services and products based on

[3] The proposed subscription price would cover a portion of the administrative, technical and operating costs of the SHORT subscription service but would not cover all costs of such subscription service or of the SHORT System. The MSRB has proposed establishing the subscription price at a commercially reasonable level.

[4] 15 U.S.C. 78o–4(b)(2)(C).

such information on terms determined by each subscriber.[5]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2010–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2010–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2010–06 and should be submitted on or before September 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20817 Filed 8–20–10; 8:45 am]

BILLING CODE 8010–01–P

[5] The MSRB notes that subscribers may be subject to proprietary rights of third parties in information provided by such third parties that is made available through the subscription.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62727; File No. SR–DTC–2010–09]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Revise its Procedures Regarding Securities Delivered to or From Participant Accounts Through the Automated Customer Account Transfer Service of National Securities Clearing Corporation

August 16, 2010.

I. Introduction

On June 4, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–DTC–2010–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change was published for comment in the **Federal Register** on July 2, 2010.[2] No comment letters were received on the proposal. This order approves the proposal.

II. Description

DTC is modifying certain provisions of its Settlement Services Guide ("Guide") in connection with concurrent rule changes being made by the National Securities Clearing Corporation ("NSCC") concerning Automated Customer Account Transfer Service ("ACATS") transfers processed through the Continuous Net Settlement ("CNS") system.[3]

NSCC's ACATS system enables members to effect automated transfers of customer accounts among themselves.[4] For ACATS transfers processed through NSCC's CNS system,[5] long and short positions are passed against Members' positions at DTC. Available securities are delivered from short Members' DTC accounts and allocated to long Members' DTC accounts by book-entry transfer.

An NSCC Member to which a customer's securities account is to be transferred through ACATS ("Receiving Member") initiates the transfer process by submitting a request to NSCC. For the transfer to be processed, the request must be accepted by the NSCC Member from which the customer's securities are being transferred ("Delivering Member"). After a Delivering Member accepts a customer account transfer request and all other preconditions of NSCC's rules for processing ACATS transfer are met, all CNS-eligible securities in the customer's account, except securities that the Receiving Member notifies NSCC should not be transferred, are entered into NSCC's CNS accounting

[1] 15 U.S.C. 78s(h)(1).

[2] Securities Exchange Act Release No. 62384 (June 25, 2010), 75 FR 38581 (July 2, 2010).

[3] SR–NSCC–2010–05. Securities Exchange Act Release Nos. 62385 (June 25, 2010), 75 FR 38579 (July 2, 2010) and 62384 (June 25, 2010), 75 FR 38581 (July 2, 2010).

[4] ACATS complements a Financial Industry Regulatory Authority ("FINRA") rule requiring FINRA members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

[5] CNS is an ongoing accounting system which nets today's Settling Trades with yesterday's Closing Positions to produce a net short or long position for a particular security for a particular Member. NSCC is the contra party for all positions. The positions are then passed against the Member's Designated Depository positions and available securities are allocated by book-entry transfer. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions which remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. CNS allocates deliveries in both the night and day cycles using an algorithm based on priority groups in descending order, age of position within a priority group, and random numbers within age groups.

operation on the day before settlement date.[6]

DTC is modifying its Guide in several ways to clarify that securities moving through NSCC's ACATS system are not subject to a lien by DTC when they are debited from a delivering Participant's DTC account or when they are credited to a receiving Participant's DTC account.[7] DTC believes its clarifications will help NSCC Members and DTC Participants meet their legal obligations to maintain possession or control of certain customer securities and will concurrently protect the interests of NSCC and DTC.[8]

DTC is modifying the CNS section of the Guide to clarify that when a Participant holds securities in its account in a no-lien location[9] and those securities are part of an ACATS transfer through CNS, DTC does not have any lien on such securities to satisfy the Participant's CNS ACATS delivery obligation. DTC is also clarifying within the Guide that ACATS deliveries from CNS are deemed to be designated by the receiving Participant as "Minimum Amount Securities", and therefore not subject to any lien by DTC, when they are credited to the receiving Participant's account.[10] Additional clarification will be made to explain that an ACATS transfer is deemed null and void and the underlying securities may be used to satisfy settlement obligations to NSCC if NSCC determines that a Delivering Member and a Receiving Member defaulted on their settlement obligations to NSCC and the Delivering Member also failed to meet its ACATS delivery obligation.

DTC intends to implement these changes during the third quarter of 2010 and will advise Participants of the specific implementation date through DTC Important Notices.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[11] and the rules and regulations thereunder applicable to DTC. In particular, the Commission believes that the amendments DTC is making to its Guide regarding securities delivered to or from Participant accounts through ACATS are consistent with DTC's obligations under Section 17A(b)(3)(F),[12] which requires, among other things, that the rules of a clearing agency are designed to remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[13] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–DTC–2010–09) be, and hereby is, approved.[15]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20816 Filed 8–20–10; 8:45 am]

BILLING CODE 8010–01–P

[6] NSCC Rule 50 (Automated Customer Account Transfer Service).

[7] As part of NSCC's companion rule filing, NSCC will amend its Rules to provide that any deliveries and receives in a particular security processed through CNS will be designated by NSCC to satisfy a Member's ACATS receive or deliver obligation prior to satisfaction of other CNS-related obligations in the same security for that Member. This will allow NSCC to track the completion status of CNS ACATS deliveries and facilitate NSCC's ability to notify DTC of which CNS deliveries are ACATS transfers.

[8] Commission Rule 15c3–3 provides that a broker-dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully-paid securities and excess margin securities, in each case, carried by a broker-dealer for the account of customers.

[9] For example, when the securities are designated as "Minimum Amount Securities" and not as "Net Additions".

[10] DTC Rules 1 and Rule 4(A) respectively define "Minimum Amount Securities" and explain the implications of this designation in protecting such securities from any lien or other claim of DTC.

Because Minimum Amount Securities are not subject to any lien or other claim by DTC, such securities are not counted as part of the Participant's Collateral Monitor. A receiving Participant can designate such securities as "Net Additions".

[11] 15 U.S.C. 78q–1.

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 15 U.S.C. 78q–1.

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62726; File No. SR–NSCC–2010–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Enhance the Process for Transfers Through the Automated Customer Account Transfer Service

August 16, 2010.

I. Introduction

On June 4, 2010, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–NSCC–2010–05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change was published for comment in the **Federal Register** on July 2, 2010.[2] No comment letters were received on the proposal. This order approves the proposal.

II. Description

NSCC's Automated Customer Account Transfer Service ("ACATS") system enables Members to effect automated transfers of customer accounts among themselves.[3] For ACATS transfers processed through NSCC's Continuous Net Settlement ("CNS") system,[4] long and short positions are passed against Members' positions at The Depository Trust Company ("DTC") and available securities are delivered from short Members' accounts at DTC and allocated to long Members' accounts by book-entry movements.

NSCC is making changes to its ACATS system in connection with a

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 62385 (June 25, 2009), 75 FR 38579 (July 2, 2010).

[3] ACATS complements a Financial Industry Regulatory Authority ("FINRA") rule requiring FINRA members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

[4] CNS is an ongoing accounting system which nets today's settling trades with yesterday's closing positions to produce a net short or long position for a particular security for a particular Member. NSCC is the counter party for all positions. The positions are then passed against the Member's designated depository positions and available securities are allocated by book-entry. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions which remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. CNS allocates deliveries in both the night and day cycles using an algorithm based on priority groups in descending order, age of position within a priority group, and random numbers within age groups.

concurrent rule change by DTC[5] and is making these changes for two reasons. First, NSCC believes the changes will enhance protection for customer securities in ACATS transfers so that customer account transfers to new firms will be maximized in the event of a Member failure. Accordingly, NSCC will modify its ACATS processing and its Rules so that deliveries or receives processed through CNS will satisfy a Member's ACATS receive or deliver obligations prior to satisfying other CNS-related obligations of that Member in the same security. NSCC will also track CNS ACATS items to prevent reversals of completed transfers in the event of a Member's failure. Second, NSCC believes the changes will facilitate compliance by its Members with their securities possession and control requirements.[6] To that end, NSCC will modify its Rules to clarify that in no event does NSCC have a lien on securities that are carried by a Member for the account of its customers and that are delivered through the CNS ACATS service.[7]

1. ACATS Transfers Through the CNS System

Through ACATS, an NSCC Member to which a customer's securities account is to be transferred ("Receiving Member") submits a Transfer Initiation Request to initiate the account transfer process. NSCC causes all CNS-eligible items in that customer account to enter NSCC's CNS accounting operation on the day before settlement date unless the Receiving Member notifies NSCC that certain items should be withheld from CNS processing.[8]

Ordinary CNS items enter the system at contract value, but ACATS items enter CNS unvalued. This reflects the nature of the ACATS CNS items as "free" transfers. To incentivize deliveries, ACATS items are marked-to-the-market on the morning of settlement date using their full CNS value as of the prior day's closing price. Consequently, the Delivering Member's CNS projection report shows a short securities position, and its CNS cash reconciliation report shows a cash debit for the "full value" mark. Conversely, the Receiving Member's projection report shows a long securities position, and its cash reconciliation report shows a cash credit equal to the "full value" mark. If the Delivering Member fulfills its ACATS delivery obligation, then its short position is cancelled, and the cash debit for the mark is offset by a cash credit. Likewise, upon receipt of the securities by the Receiving Member, the Receiving Member's long position is offset, and the cash credit for the mark is offset by the cash debit. The net result is a "free" transfer of securities because no money is paid by either the Delivering Member or Receiving Member.

For transactions processed through CNS, NSCC normally becomes the counter party to the transaction and guarantees settlement.[9] However, CNS ACATS transfers are not guaranteed. If a party fails to pay any portion of its money settlement obligation on settlement Date,[10] NSCC may reverse uncompleted ACATS items and any associated debits or credits calculated using the marking process described above would be eliminated.

ACATS transfers settled through CNS are fungible with all other CNS activity. The CNS system does not distinguish between ACATS transactions and other transactions, which means that CNS ACATS receives and delivers are netted with guaranteed settling trades in the same securities. However, NSCC will now begin tracking ACATS receive and deliver obligations in CNS, and CNS allocations will be applied to ACATS receive and deliver obligations for a Member in a security before satisfying another obligation in the same security. At the end of each processing day, CNS ACATS fails will continue to be marked to the full-market value and netted with all other CNS obligations under NSCC's Rules.

In the event of a Member failure, NSCC will use this automated tracking capability to differentiate between completed and uncompleted CNS ACATS transactions. NSCC will therefore be able to reverse uncompleted ACATS transfers of a failing Member while allowing assets associated with completed ACATS transfers to remain with the Receiving Member. NSCC believes this will help maximize CNS-related transfers of customer accounts to new firms.

An ACATS transfer of a failing Member will be deemed uncompleted if the failing Member is a Delivering Member and it has failed to deliver to CNS all or a portion of the securities associated with the ACATS transfer. If the failing Member is a Receiving Member and it has failed to receive all or a portion of the securities associated with the ACATS transfer from CNS, then the transfer will likewise be deemed uncompleted. In either case, if the Delivering Member makes a partial delivery of securities to CNS then the transfer will be deemed completed for the amount of securities received from CNS by the Receiving Member to the extent that amount does not exceed the amount delivered to CNS by the Delivering Member. The transfer will be deemed uncompleted as to any remaining securities beyond that amount, and only the uncompleted portion of the transfer will be subject to reversal. Transfers will also be deemed uncompleted when the failing Member is the Delivering Member and it has a flat or overall long CNS position or when the failing member is the Receiving Member and it has a flat or overall short CNS position.

In the event a Delivering Member and Receiving Member fail on the same settlement day and have an ACATS transfer obligation between them, any transfer deemed uncompleted for the Delivering Member will also be deemed uncompleted for the Receiving Member. NSCC will notify the affected Members of the details associated with the assets subject to the reversal, and the affected Members will have to reestablish customer positions accordingly.

2. Possession and Control Requirements

To facilitate the compliance of Members with their securities possession and control requirements of securities subject to ACATS transfers processed through CNS, NSCC will modify its Rules to clarify that it does not maintain a lien over ACATS assets delivered to a Receiving Member through CNS.

3. Amendments to Rules and Procedures

To provide for the modifications to ACATS described in this order, NSCC

[5] File No. SR–DTC–2010–09. Securities Exchange Act Release Nos. 62384 (June 25, 2010), 75 FR 38581 (July 2, 2010) and 62385 (June 25, 2009), 75 FR 38579 (July 2, 2010).

[6] Commission Rule 15c3–3 provides that a broker-dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully paid securities and excess margin securities carried for the account of customers. 17 CFR 240.15c3–3.

[7] DTC's Settlement Service Guide currently provides that securities delivered to a receiving DTC Participant's account from CNS are classified as collateral which may otherwise be made available to NSCC in the event that the DTC Participant fails to meet its NSCC settlement obligation. Pursuant to the concurrent DTC rule change, DTC will revise its Service Guide to provide that ACATS deliveries from CNS will be designated by the DTC Participant as minimum amount securities when credited to the Participant's account. This designation will prevent the securities from being designated as collateral for either this purpose or for purposes of DTC's Rules.

[8] NSCC Rule 50 (Automated Customer Account Transfer Service).

[9] Pursuant to Addendum K of its Rules, NSCC generally guarantees the completion of Continuous Net Settlement ("CNS") and Balance Order trades that reach the later of midnight of T+1 or midnight of the day they are reported to Members. Shortened process trades, such as same-day and next-day settling trades, are guaranteed upon comparison or trade recording processing.

[10] This includes failure by a Member to pay a mark-to-market charge.

will amend its rules as described in the summaries below.

a. Rule 18 (Procedures for When [the Corporation] Declines or Ceases To Act)

Section 7 of Rule 18 provides that NSCC maintains a lien on all property placed in its possession by a Member as security for any and all liabilities of that Member to NSCC. An exception to this rule is where such a lien would be prohibited under Commission Rules 8c–1 and 15c2–1. NSCC will modify the section to clarify that it does not maintain a lien on ACATS assets that have been delivered to a Receiving Member through CNS.

b. Rule 50 (ACATS)

NSCC will amend Rule 50 to clarify that NSCC may reverse uncompleted ACATS obligations when either the Delivering or Receiving Member has failed to meet its settlement obligation to NSCC. In addition, this Rule will be revised to note that in the event of such a reversal of uncompleted CNS ACATS obligations, NSCC will make files available to each Member to show each open security position due to settle that day that is subject to the reversal as well as such other information as NSCC may deem advisable. NSCC will also make a technical correction to clarify that ACATS transactions enter the CNS Accounting Operation on the day before Settlement Date (SD–1) rather than the day after Trade Date (T+1).

c. Procedure VII (CNS Accounting Operation)

NSCC will modify Procedure VII to provide for the tracking of customer transfers by stating that deliveries of a particular security through CNS will be used to satisfy a Member's ACATS receive and deliver obligations before being used to satisfy another obligation, such as a trade-related obligation of that Member. In addition, the modified language will indicate that this designation will be provided to the Member's Designated Depository to facilitate its processing of the item.

4. Inplementation

NSCC intends to implement these changes during the third quarter of 2010 and will advise Members of the implementation date through issuance of NSCC Important Notices. NSCC has agreed to provide Commission staff with updates on at least a quarterly basis on the progress related to industry discussions for processing enhancements for non-CNS ACAT transfers.[11]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[12] and the rules and regulations thereunder applicable to NSCC. In particular, the Commission believes that the changes NSCC is making to its ACATS system to implement a tracking mechanism to distinguish ACATS activity from other items processed through CNS and to clarify that NSCC does not maintain a lien on ACATS assets delivered to a Receiving Member through CNS are consistent with NSCC's obligations under Section 17A(b)(3)(F),[13] which requires, among other things, that the rules of a clearing agency are designed to protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[14] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (File No. SR–NSCC–2010–05) be, and hereby is, approved.[16]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–20815 Filed 8–20–10; 8:45 am]

BILLING CODE 8010–01–P

[11] In connection with its review of ACATS, NSCC has agreed to provide Commission staff with updates, not less frequently than once per quarter, of its ongoing cooperative efforts with industry participants to determine the feasibility of procedures whereby it will treat ACATS full account transfers uniformly and it will execute, delete or reverse the transfers consistently for all the assets in an account whether those assets are CNS-eligible or not.

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78s(b)(2).

[16] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2010–0023]

CAFTA–DR Consultation Request Regarding Guatemala's Apparent Failure to Effectively Enforce its Labor Laws

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on July 30, 2010, pursuant to the Labor Chapter (Chapter 16) of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR), the United States requested consultations with the Government of Guatemala to discuss Guatemala's apparent failure to meet its obligation under Article 16.2.1(a) to effectively enforce its labor laws. The consultations request may be found at *http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/kirk-solis-le*. USTR invites written comments from the public concerning the issues that will be raised in consultations.

DATES: Although USTR will accept any comments received during the course of the consultations, comments should be submitted on or before September 22, 2010 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov*, docket number USTR–2010–0023. If you are unable to provide submissions through *http://www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Carlos Quintana, Special Counsel for Trade and Labor, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9439.

SUPPLEMENTARY INFORMATION: On July 30, 2010, the United States requested consultations with the Government of Guatemala to discuss issues and matters related to Guatemala's obligations under Article 16.2.1(a) of the CAFTA–DR, as well as under Chapter Sixteen of the CAFTA–DR more broadly. Article 16.2.1(a) requires that "[a] Party shall not fail to effectively enforce its labor

laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement." The consultations were requested pursuant to Article 16.6.1 of the CAFTA–DR, which states that "[a] Party may request consultations with another Party regarding any matter arising under this Chapter. * * *"

Issues Raised by the United States

In its request for consultations, the United States notes that the Government of Guatemala appears to be failing to meet its obligations under Article 16.2.1(a) with respect to effective enforcement of Guatemalan labor laws related to the right of association, the right to organize and bargain collectively, and acceptable conditions of work. Based on an extensive examination of Guatemala's labor laws, collection of factual evidence, and analysis of Guatemala's obligations under Article 16.2.1(a), the United States identified a significant number of failures by Guatemala to enforce its labor laws, constituting a sustained or recurring course of action or inaction. Failures include: (1) Ministry of Labor failures to investigate alleged labor law violations; (2) Ministry of Labor failures to take enforcement action once the Ministry identified a labor law violation, and (3) Court failures to enforce Labor Court orders in cases involving labor law violations.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues that will be raised in consultations. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2010–0023. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number 2010–0023 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a "Type Comment and Upload File" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment and Upload File" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov*. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov*. The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this matter accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to this matter.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

Elissa M. Alben,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2010–20756 Filed 8–20–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0118]

Wheego Electric Cars, Inc.; Receipt of Application for Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208

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

ACTION: Notice of receipt of petition for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.*

SUMMARY: In accordance with the procedures in 49 CFR part 555, Wheego Electric Cars, Inc., has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.[1]

This notice of receipt of an application for temporary exemption is published in accordance with statutory provisions. NHTSA has not made any judgment on the merits of the application.

DATES: You should submit your comments not later than September 22, 2010.

FOR FURTHER INFORMATION CONTACT: David Jasinski, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41–213, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

[1] To view the application, go to *http://www.regulations.gov* and enter the docket number set forth in the heading of this document

COMMENTS: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site by clicking on "Help and Information" or "Help/Info."
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday, except Federal Holidays. Telephone: (202) 366–9826.

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) or you may visit *http://www.dot.gov/privacy.html.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags." [2] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats.

The new requirements were phased in beginning with the 2004 model year. Small volume manufacturers were not subject to the advanced air bag requirements until September 1, 2006.

In recent years, NHTSA has addressed a number of petitions for exemption from the advanced air bag requirements of FMVSS No. 208. The majority of these requests have come from small manufacturers which have petitioned on the basis of substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. NHTSA has granted a number of these petitions, usually in situations where the manufacturer is supplying standard air bags in lieu of advanced air bags.[3] In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemption granted by this agency. In the present case, we are addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of a small electric car.

II. Overview of Wheego's Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Wheego Electric Cars, Inc. (Wheego) has submitted a petition (dated May 31, 2010) asking the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. Wheego requested the exemption for a period of three years.

III. Statutory Basis for Requested Part 555 Exemption

The National Traffic and Motor Vehicle Safety Act, codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for this section to NHTSA.

NHTSA established part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Vehicle manufacturers may apply for temporary exemptions on several bases, one of which is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

A petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

[2] *See* 65 FR 30680 (May 12, 2000).

[3] *See, e.g.,* grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not state that a manufacturer has substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of "manufacturer" (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis,"[4] the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's on-going good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

IV. Wheego's Petition

Wheego submitted a petition for exemption from certain requirements of FMVSS No. 208, *Occupant Crash Protection*. Specifically, the petition requests an exemption from paragraphs S14, S15, S16, S17, S18, S19, S21, S23, S25, S26, and S27 of FMVSS No. 208, which relate to the advanced air bag requirements. Wheego has requested an exemption for the Wheego Whip LiFe (LiFe) model, an all-electric "full speed" car, and that the exemption period run for three years. Wheego requests an exemption pursuant to 49 U.S.C. 30113(b)(3)(B)(i) and 49 CFR 555.6(a).[5]

The basis for Wheego's application is substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. According to the petition, Wheego is a privately held company incorporated in the State of Delaware, with headquarters in Atlanta, Georgia. Its total motor vehicle production during the 12 months preceding the filing of the petition was 308 vehicles. Wheego indicated that all of these vehicles were all-electric Wheego Whip LSVs (low speed vehicles). In order for a vehicle to qualify as a low speed vehicle under FMVSS No. 500, Low Speed Vehicles, its top speed must not exceed 25 miles per hour.

Wheego states that the LiFe is based on a high strength steel unibody chassis made by Shijiazhuan ShuangHuan Automobile Co. (ShuangHuan) in China. ShuangHuan manufactures a passenger car (called the "Noble") with the chassis and an internal combustion engine for sale in China, Australia, Greece, and other parts of the world outside the United States. Wheego states that, by purchasing and using an existing chassis, it was able to avoid the high cost of developing and manufacturing a brand new vehicle design. Wheego also states that ShuangHuan has developed dual standard air bags for the chassis, but not an advanced air bag system.

Wheego contends that granting an exemption would be in the public interest. Wheego intends the LiFe to be "one of the first affordable electric cars available in the United States." Wheego states that electric vehicles have several benefits including reducing the nation's reliance on foreign oil and reducing greenhouse gas and other emissions. Wheego also contends that, allowing it to enter the market now would contribute to the development of electric vehicles in general by helping to evaluate the market and performance of electric vehicles with real world experience. Wheego also cites employment opportunities as a benefit.

Wheego intends to produce only a limited number of LiFes in the first three years of production, which it contends would limit the overall impact on motor vehicle safety. Wheego projects selling 550 LiFes in 2010, 1,200 in 2011, 2,400 in 2012, and 5,000 in 2013. Wheego states that the primary purpose of the LiFe will be as a commuter vehicle because it will have a limited range compared to that of gasoline powered vehicles. The LiFe will have a projected range of 100 miles and will require a minimum of 5 hours to regain a 50 percent charge. Because of the small sales volume and limited range, Wheego states that the number of hours the LiFe will be on roads will be lower compared to a gasoline powered vehicle, thereby reducing the likelihood of a crash.

Wheego contends that compliance with the advanced air bag requirements would cause substantial economic hardship and that Wheego has tried to comply with the standard in good faith. Wheego states that it cannot acquire an off-the-shelf advanced air bag system for the LiFe because an advanced air bag system has never been developed for the chassis used in the LiFe. Wheego states that it does not have the technical or financial resources to develop such a system independently and would have to cancel the development of a passenger car and terminate its operations if it does not obtain the requested exemption.

In October 2009, Wheego engaged J.K. Technologies in Baltimore, Maryland, for help with testing and certification requirements of the FMVSSs. Also in October 2009, Wheego approached TASS Engineering Services and Bosch for help in developing an advanced air bag system for the LiFe. Based upon this consultation, Wheego estimates that an advanced air bag system would cost $3 million and would take 18 months to test and implement. Wheego intends to spend $1 million in each of 2011, 2012, and 2013 in an effort to develop a system that will comply with the advanced air bag requirements. Wheego states that based on its projected revenues, by the end of the third year of an exemption, Wheego should be able to build cars with advanced air bags at no additional cost.

One issue raised by Wheego's petition is whether ShuangHuan might also be considered a manufacturer of the vehicle, given the relationship between Wheego and ShuangHuan. As indicated above, pursuant to 49 U.S.C. 30113, in order to be eligible for exemption, a manufacturer must not have produced more than 10,000 vehicles in the previous year. While Wheego by itself would meet this requirement, NHTSA must consider whether ShuangHuan could also be considered a manufacturer of the LiFe.

If ShuangHuan were also considered to be a manufacturer, there would be issues of whether we should consider one or both companies with respect to

[4] 49 U.S.C. 30113(b)(1).

[5] Wheego has not requested a two-year exemption for the development or field evaluation of a low-emission vehicle under 49 U.S.C. 30113(b)(3)(B)(iii) and 49 CFR 555.6(c).

the 10,000 vehicle limitation for eligibility, hardship, good faith efforts, etc. We note, for example, that we have in the past cited the possible situation of large manufacturers potentially avoiding the statutory 10,000 vehicle limit by engaging in joint ventures with small companies and having the small company submit the petition.[6]

Wheego uses the chassis of the ShuangHuan Noble for its vehicle. However, we have no knowledge of the modifications Wheego makes to the vehicles other than to install an electric powertrain in the vehicle. We have little knowledge of whether Wheego makes changes to the design of the ShuangHuan Noble to bring it into compliance with U.S. standards or whether ShuangHuan is making the modifications. Wheego states that it has spent the majority of its time and resources developing the LiFe's safety features, including the seat belt requirements. However, Wheego also states that the standard air bags have been developed by ShuangHuan.

We have found articles on Wheego's Web site stating that Wheego and ShuangHuan are entering into a "partnership" to produce electric vehicles. Wheego's Web site also states that ShuangHuan would manufacture an electric vehicle similar to the LiFe, called the E-Noble, to sell outside of the United States.[7] Also, the Web site of ShuangHuan includes, at the top right of its home page (English language),[8] a box titled "Electric Noble in USA" with a picture of the vehicle. Clicking on the box brings up the Wheego Web site. This linkage suggests that the E-Noble and LiFe are very similar vehicles.

Due to the nature of the LiFe and the relationship between ShuangHuan and Wheego, NHTSA will closely examine whether Wheego is eligible for a financial hardship exemption for this vehicle. NHTSA specifically requests comments on this issue.

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested petition. The agency has tentatively concluded that the petition is complete. The agency has not made any judgment on the eligibility of the petitioner or the merits of the application, and is placing a non-confidential copy of the petition in the docket.

We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: August 17, 2010.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2010–20805 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–59–P

[6] *See* grant of petition to Tesla Motors, Inc., 73 FR 4944, 4948 (Jan. 28, 2008).

[7] *See* Wheego and ShuangHuan Automobile Announce Electric Car Partnership, available at *http://wheego.net/more/2008/11/19/rtev-and-shuonghuan-automobile-announce-electric-car-portnership-2/* (last accessed July 27, 2010); Wheego Electric Cars and Shuanghuan Automobile Form EV Partnership, *available at http://wheego.net/more/2008/11/20/rtev-ond-shuanghuan-outomohile-form-ev-partnership/* (last accessed July 27, 2010); Wheego, Shuanghuan Auto Plan 2-Seater Electric Car for '09, *available at http://wheego.net/more/2008/11/20/rtev-shuanghuan-auto-plan-2-seater-electric-car-for-%E2%80%9809/* (last accessed July 27, 2010). A copy of these articles has been included in the docket.

[8] *See http://www.hbshauto.com/en/* (last accessed July 28, 2010).

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0074]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TARA VANA.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0074 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 22, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0074. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.govhttp://smses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TARA VANA is:

Intended Commercial Use of Vessel: "Carrying passengers for pleasure cruising, sailing."

Geographic Region: "California."

Privacy Act

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

By Order of the Maritime Administrator.

Dated: August 13, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–20760 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0073]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel EXPEDITION.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0073 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 22, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0073. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.govhttp://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel EXPEDITION is:

Intended Commercial Use of Vessel: "Recreational fishing charter."

Geographic Region: "Florida."

Privacy Act

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

By Order of the Maritime Administrator.

Dated: August 13, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–20758 Filed 8–20–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 17, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before September 22, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0170.

Type of Review: Extension without change to a currently approved collection.

Title: Corporation Application for Quick Refund of Overpayment of Estimated Tax.

Form: 4466.

Abstract: Form 4466 is used by a corporation to file for an adjustment (quick refund) of overpayment of estimated income tax for the tax year. This information is used to process the claim, so the refund can be issued.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 76,433 hours.

OMB Number: 1545–0685.

Type of Review: Revision of a currently approved collection.

Title: Export Exemption Certificate.

Form: 1363.

Abstract: This form is used by carriers of property by air to justify the tax-free transport of property. It is used by IRS as proof of tax exempt status of each shipment.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 425,000 hours.

OMB Number: 1545–0874.

Type of Review: Extension without change to a currently approved collection.

Title: Carryforward Election of Unused Private Activity Bond Volume Cap.

Form: 8328.

Abstract: Section 146(f) of the Internal Revenue Code requires that issuing authorities of certain types of tax-exempt bonds must notify the IRS if they intend to carry forward the unused limitation for specific projects. The IRS uses the information to complete the required study of tax-exempt bonds (required by Congress).

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 132,200 hours.

OMB Number: 1545–0754.

Type of Review: Extension without change to a currently approved collection.

Title: LR–255–81 (Final) Substantiation of Charitable Contributions.

Abstract: Congress intended that the IRS prescribe rules and requirements to assure substantiation and verification of charitable contributions. The regulations serve these purposes.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 2,158,000 hours.

OMB Number: 1545–0786.

Type of Review: Extension without change to a currently approved collection.

Title: INTL–50–86 (Final) (TD 8110) Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form.

Abstract: The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j)) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations. The people reporting will be institutions holding bearer obligations.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 39,742 hours.

OMB Number: 1545–1070.

Type of Review: Extension without change to a currently approved collection.

Title: TD 8223, Temporary, Branch Tax; TD 8432, Final and Temporary, Branch Profits Tax; and TD 8657, Final and Temporary, Regulations on Effectively Connected Income and the Branch Profits Tax.

Abstract: The regulations explain how to comply with section 884, which imposes a tax on the earnings of a foreign corporation's branch that are removed from the branch and which subjects interest paid by the branch, and certain interest deducted by the foreign corporation to tax.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 12,694 hours.

OMB Number: 1545–1603.

Type of Review: Extension without change to a currently approved collection.

Title: REG–104691–97 (Final) Electronic Tip Report.

Abstract: The regulations provide rules authorizing employers to establish electronic systems for use by their tipped employees in reporting tips to their employer. The information will be used by employers to determine the amount of income tax and FICA tax to withhold from the tipped employee's wages.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 600,000 hours.

OMB Number: 1545–1748.

Type of Review: Extension without change to a currently approved collection.

Title: REG–106917–99 (Final) Changes in Accounting Periods.

Abstract: Section 1.441–2(b) (1) requires certain taxpayers to file statements on their federal income tax returns to notify the Commissioner of the taxpayers' election to adopt a 52–53 week taxable year. Section 1.442–1(b)(4) provides that certain taxpayers must establish books and records that clearly reflect income for the short period involved when changing their taxable year to a fiscal taxable year. Section 1.442–1(d) requires a newly married husband or wife to file a statement with their short period return when changing to the other spouse's taxable year.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1545–0954.

Type of Review: Extension without change to a currently approved collection.

Title: Return for Nuclear Decommissioning Funds and Certain Related Persons.

Form: 1120–ND.

Abstract: A nuclear utility files Form 1120–ND to report the income and taxes of a fund set up by the public utility to provide cash for the dismantling of the nuclear power plant. The IRS uses Form 1120–ND to determine if the fund income taxes are correctly computed and if a person related to the fund or the nuclear utility must pay taxes on self-dealing.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,259 hours.

OMB Number: 1545–1354.

Type of Review: Extension without change to a currently approved collection.

Title: Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

Form: 8833.

Abstract: Form 8833 is used by taxpayers that are required by section 6114 to disclose a treaty-based return position to disclose that position. The form may also be used to make the treaty-based position disclosure required by regulations section 301.7701(b)–7(b) for "dual resident" taxpayers.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 25,740 hours.

OMB Number: 1545–1722.

Type of Review: Extension without change to a currently approved collection.

Title: Extraterritorial Income Exclusion.

Form: 8873.

Abstract: A taxpayer uses Form 8873 to claim the gross income exclusion provided for by section 114 of the Internal Revenue Code.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 19,087,500 hours.

OMB Number: 1545–0213.

Type of Review: Extension without change to a currently approved collection.

Title: Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax.

Form: 5578.

Abstract: Form 5578 is used by private schools that do not file Schedule A (Form 990) to certify that they have a racially nondiscriminatory policy toward students as outlined in Rev. Proc 75–50. The Internal Revenue Service uses the information to help ensure that the school is maintaining a nondiscriminatory policy in keeping with its exempt status.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 3,730 hours.

OMB Number: 1545–0773.

Type of Review: Extension without change to a currently approved collection.

Title: TD 8172 (Final) Qualification of Trustee or Like Fiduciary in Bankruptcy

Abstract: Internal Revenue Code section 6036 requires that receivers, trustees in bankruptcy, assignees for the benefit of creditors, or other like fiduciaries, and all executors shall notify the district director within 10 days of appointment. This regulation provides that the notice shall include the name and location of the Court and when possible, the date, time, and place of any hearing, meeting or other scheduled action. The regulation also eliminates the notice requirement under section 6036 for bankruptcy trustees, debtors in possession and other fiduciaries in a bankruptcy proceeding.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 12,500 hours.

OMB Number: 1545–0201.

Type of Review: Extension without change to a currently approved collection.

Title: Request for Change in Plan/Trust Year.

Form: 5308.

Abstract: Form 5308 is used to request permission to change the plan or trust

year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 339 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–20823 Filed 8–20–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 3 newly-designated entities whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters."

DATES: The designation by the Director of OFAC of the 3 entities identified in this notice pursuant to Executive Order 13382 is effective on August 13, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, *tel.:* (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the "Order"), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On August 13, 2010, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated three entities whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

1. BUSHEHR SHIPPING COMPANY LIMITED, 143/1 Tower Road, Sliema, Slm 1604, Malta; Business Registration Document #C 37422 (Malta) issued 30 Nov 2005 [NPWMD]
2. ISI MARITIME LIMITED, 147/1, St. Lucia Street, Valletta, Vlt 1185, Malta; Business Registration Document #C 28940 (Malta) issued 23 Nov 2001 [NPWMD]
3. MARBLE SHIPPING LIMITED, 143/1 Tower Road, Sliema, Slm 1604, Malta; Business Registration Document #C 41949 (Malta) issued 25 Jul 2007 [NPWMD]

Dated: August 17, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–20824 Filed 8–20–10; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–ES

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–ES, Estimated Income Tax for Estates and Trusts.

DATES: Written comments should be received on or before October 22, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Estimated Income Tax for Estates and Trusts.

OMB Number: 1545–0971.

Form Number: Form 1041–ES.

Abstract: Internal Revenue Code section 6654(1) imposes a penalty on trusts, and in certain circumstances, a decedent's estate, for underpayment of estimated tax. Form 1041–ES is used by the fiduciary to make the estimated tax payments. The form provides the IRS with information to give estates and trusts proper credit for estimated tax payments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,200,000.

Estimated Time per Respondent: 2 hours, 38 minutes.

Estimated Total Annual Burden Hours: 3,161,236.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 9, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–20887 Filed 8–20–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Customer Satisfaction Survey.

DATES: Written comments should be received on or before October 16, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A4–A, Parkersburg, WV 26106–5318, or *judi.owens@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–5318, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Satisfaction Survey to Implement Executive Order 12862.

OMB Number: 1535–0122.

Abstract: The information from the survey will be used to improve customer service.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 7,000.

Estimated Total Annual Burden Hours: 876.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 16, 2010.

Judi Owens,

Manager, Information Management Branch.

[FR Doc. 2010–20871 Filed 8–20–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the sale and issue of Marketable Book-Entry securities.

DATES: Written comments should be received on or before October 16, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A4–A, Parkersburg, WV 26106–5318, or *judi.owens@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–5318, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Treasury Security Commercial Tender Form.

OMB Number: 1535–0112.

Form Number: Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds.

Abstract: The information is requested to process the tenders and to ensure compliance with regulations.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals, business or other for profit, or not-for-profit institutions.

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 16, 2010.

Judi Owens,

Manager, Information Management Branch.

[FR Doc. 2010–20869 Filed 8–20–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Direct Deposit Sign Up Form.

DATES: Written comments should be received on or before October 16, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A4–A, Parkersburg, WV 26106–5318, or *judi.owens@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–5318, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Direct Deposit Sign Up Form.

OMB Number: 1535–0128.

Form Number: PD F 5396.

Abstract: The information is requested to process payment data to a financial institution.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 18,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 3,060.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 16, 2010.

Judi Owens,

Manager, Information Management Branch.

[FR Doc. 2010–20867 Filed 8–20–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2004–59

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2004–59, Plan Amendments Following Election of Alternative Deficit Reduction Contribution.

DATES: Written comments should be received on or before October 22, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Plan Amendments Following Election of Alternative Deficit Reduction Contribution.

OMB Number: 1545–1889.

Notice Number: Notice 2004–59.

Abstract: Notice 2004–59 sets forth answers to certain questions raised by the public when there is an amendment to an election to take advantage of the alternative deficit reduction contribution described in Public Law 108–218. This notice requires what are designed as restricted amendments.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Average Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 10, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–20881 Filed 8–20–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1023

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

DATES: Written comments should be received on or before October 22, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

OMB Number: 1545–0056.

Form Number: Form 1023.

Abstract: Form 1023 is filed by applicants seeking Federal income tax exemption as organizations described in section 501(c)(3) of the Internal Revenue Code. IRS uses the information to determine if the applicant is exempt and whether the applicant is a private foundation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 33,378.

Estimated Time per Respondents: 106 hours, 4 minutes.

Estimated Total Annual Burden Hours: 3,138,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–20890 Filed 8–20–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS). Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–97–91 and PS–101–90 (TD 8448), Enhanced Oil Recovery Credit (Section 1.43–3(a)(3) and 1.43–3(b)(3)).

DATES: Written comments should be received on or before October 22, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, (202) 927–9368, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224 or through the Internet at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Enhanced Oil Recovery Credit.

OMB Number: 1545–1292.

Regulation Project Number: PS–97–91 and PS–101–90.

Abstract: This regulation provides guidance concerning the costs subject to the enhanced oil recovery credit, the circumstances under which the credit is available, and procedures for certifying to the Internal Revenue Service that a project meets the requirements of

section 43(c) of the Internal Revenue Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 73 hours.

Estimated Total Annual Burden Hours: 1,460.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2010.

Gerald Shields,

IRS Supervisory Tax Anaylst.

[FR Doc. 2010–20883 Filed 8–20–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–4–89; (TD 8580)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–4–89 (TD 8580), Disposition of an Interest in a Nuclear Power Plant (Sec. 1.468A–3).

DATES: Written comments should be received on or before October 22, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Disposition of an Interest in a Nuclear Power Plant.

OMB Number: 1545–1378.

Regulation Project Number: PS–4–89 (TD 8580).

Abstract: This regulation relates to certain Federal income tax consequences of a disposition of an interest in a nuclear power plant by a taxpayer that has maintained a nuclear decommissioning fund with respect to that plant. The regulation affects taxpayers that transfer or acquire interests in nuclear power plants by providing guidance on the tax consequences of these transfers. In addition, the regulation extends the benefits of Internal Revenue Code section 468A to electing taxpayers with an interest in a nuclear power plant under the jurisdiction of the Rural Electrification Administration.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 70.

Estimated Time per Respondent: 8 hrs., 13 minutes.

Estimated Total Annual Burden Hours: 575 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 10, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–20889 Filed 8–20–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106012–98] (TD 8936)

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106012–98 (TD 8936), Definition of Contribution in Aid of Construction Under Section 118(c)(§ 1.118–2).

DATES: Written comments should be received on or before October 22, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Fields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulation should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Definition of Contribution in Aid of Construction Under Section 118(c).

OMB Number: 1545–1639.

Regulation Project Number: REG–106012–98 (TD 8936).

Abstract: This regulation provides guidance with respect to section 118(c), which provides that a contribution in aid of construction received by a regulated public water or sewage utility is treated as a contribution to the capital of the utility and excluded from gross income.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Average Time Per Respondent: 1 hour.

Estimated Total Annual Reporting Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 10, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–20879 Filed 8–20–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–79–91; (T.D. 8573)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–79–91(T.D. 8573), Information Returns Required of United States Persons With Respect To Certain Foreign Corporations (§§ 1.6035–1, 1.6038–2 and 1.6046–1).

DATES: Written comments should be received on or before October 22, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Joel Goldberger, at (202) 927–9368, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Information Returns Required of United States Persons with Respect To Certain Foreign Corporations.

OMB Number: 1545–1317.

Regulation Project Number: INTL–79–91. (T.D. 8573)

Abstract: This regulation amends the existing regulations under sections 6035, 6038, and 6046 of the Internal Revenue Code. The regulation amends and liberalizes certain requirements regarding the format in which information must be provided for purposes of Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations. The regulation provides that financial statement information must be expressed in U.S. dollars translated according to U.S. generally accepted accounting principles and permits functional reporting of certain items.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

The burden for the collection of information is reflected in the burden for Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–20893 Filed 8–20–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–102–88; T.D. 8612]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–102–88 (T.D. 8612), Income, Gift and Estate Tax (20.2056A–3, 20.2056A–4, and 20.2056A–10).

DATES: Written comments should be received on or before October 22, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 927–9368, or through the Internet at *Joel.P.Goldberger@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Income, Gift and Estate Tax.

OMB Number: 1545–1360.

Regulation Project Number: PS–102–88. (T.D. 8612)

Abstract: This regulation concerns the availability of the gift and estate tax marital deduction when the donee spouse or the surviving spouse is not a United States citizen. The regulation provides guidance to individuals or fiduciaries: (1) For making a qualified domestic trust election on the estate tax return of a decedent whose surviving spouse is not a United States citizen in order that the estate may obtain the marital deduction, and (2) for filing the annual returns that such an election may require.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,300.

Estimated Time per Respondent: 2 hours, 40 minutes.

Estimated Total Annual Burden Hours: 6,150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 6, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–20895 Filed 8–20–10; 8:45 am]

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Federal Register

Monday,
August 23, 2010

Part II

Department of Education

48 CFR Chapter 34
Department of Education Acquisition Regulation; Proposed Rule

DEPARTMENT OF EDUCATION

48 CFR Chapter 34

[Docket ID ED–2010–OCFO–0015]

RIN 1890–AA16

Department of Education Acquisition Regulation

AGENCY: Office of the Chief Financial Officer, Department of Education (Department).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to reissue the Department of Education Acquisition Regulation (EDAR) in order to update it to accurately implement the current Federal Acquisition Regulation (FAR) and Department policies.

DATES: We must receive your comments on or before September 22, 2010.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Nicole Evans, U.S. Department of Education, 400 Maryland Avenue, SW., room 7164, Potomac Center Plaza, Washington, DC 20202–4200.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Nicole Evans. Telephone: (202) 245–6172 or via Internet: *Nicole.Evans@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 7137, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The EDAR was last updated in 1987. In the years since then, the FAR has changed substantially. These changes caused a need for the Department to update the EDAR so that it correctly implements the FAR and reflects Department policy.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Generally, these proposed regulations are issued under the authority of 5 U.S.C. 301, which authorizes the heads of agencies to issue regulations governing the agency, and 20 U.S.C. 1018a, which authorizes procurement flexibility for the performance based organization (PBO), the Office of Federal Student Aid (FSA), for the delivery of Federal student financial assistance. We use the term PBO or FSA when referring to FSA in this preamble.

Subchapter A—General

Part 3401 ED Acquisition Regulation System

FAR: FAR Part 1 (Federal acquisition regulations system) sets forth the purpose, authority, and structure of the FAR, authorizes agency FAR supplements and deviations from the FAR, and discusses career development, contracting authority, and responsibilities.

Current Regulations: The current EDAR predates the procurement flexibility authorized by 20 U.S.C. 1018a and contains outdated information on the location of regulations and on the roles and responsibilities within the Department. The current regulations also do not include a section on ratification of unauthorized commitments or on the nomination and appointment of contracting officer's representatives.

Proposed Regulations: The proposed regulations would modify 3401.104 (Applicability) to add subparagraph (b) explaining that the PBO has specific contracting authority.

Proposed subparagraph (c) would add an explanation that when using non-appropriated funds the Department will follow the FAR and EDAR to the maximum extent practicable.

We are proposing to revise 3401.105–3 (Copies) to reflect the current method for obtaining copies of this regulation.

We are also proposing to revise 3401.3 (Agency acquisition regulations) to add two paragraphs addressing policy regarding the agency's supplementation of the FAR and explaining how the EDAR is published and codified.

Proposed changes to 3401.4 (Deviations) would make the Senior Procurement Executive (SPE) the approving official for individual deviations to the FAR and EDAR (3401.403), and the Chief Acquisition

Officer (CAO) the approving official for class deviations (3401.404).

We are further proposing to revise 3401.601 (General) to explain the current delegation of contracting authority in the Department.

Proposed 3401.602–3 (Ratification of unauthorized commitments) would outline the Department's policy and procedures on ratifying unauthorized commitments.

Proposed 3401.670 (Nomination and appointment of contracting officer's representatives (CORs)) would add information on nominating and appointing contracting officer's representatives (CORs). Proposed 3401.670–3 provides for Contracting Officers to insert a clause concerning CORs in all solicitations and contracts for which a COR will be (or is) appointed.

Reasons: The proposed changes to this part provide the reference to the PBO statute authorizing the PBO's procurement flexibilities and provide more information to the contracting community and the public about the EDAR, certain Department policies and procedures, and the roles and responsibilities of different contracting personnel in the Department.

Part 3402 Definitions of Words and Terms

FAR: FAR Part 2 (Definitions of words and terms) defines relevant words and terms used in the FAR.

Current Regulations: The current EDAR's part 3402 defines only two terms, Head of the Contracting Activity and Procurement Executive, and prescribes the use of a definitions clause.

Proposed Regulations: We are proposing to revise 3402.101 (Definitions) to add definitions for *Chief Acquisition Officer, Chief of the Contracting Office, Contracting Officer's Representative, Head of the Contracting Activity, Performance-Based Organization, Senior Procurement Executive,* and *Department* or *ED.*

Proposed 3402.101–70 (Abbreviations and acronyms) would add twelve abbreviations and acronyms relevant to the EDAR.

Reasons: The proposed changes to this part would clarify the terminology and the definitions of terms used in the EDAR.

Part 3403 Improper Business Practices and Personal Conflicts of Interest

FAR: FAR Part 3 (Improper business practices and conflicts of interest) regulates standards of conduct, gratuities to government personnel, reports of suspected antitrust violations, contingent fees, and contracts with government employees or organizations owned or controlled by them.

Current Regulations: The current EDAR requires Department personnel to report violations of the gratuities clause, antitrust violations, and misrepresentation or violation of the covenant against contingent fees.

The current EDAR specifies that the approving official for contracts with government employees or organizations controlled by them is the Deputy Under Secretary for Management.

Proposed Regulations: We are proposing to revise 3403.6 (Contracts with government employees or organizations owned or controlled by them) to change the approving official for exceptions to the policy in FAR 3.601 (prohibiting contracts with Government employees or organizations owned or controlled by them) to the Head of Contracting Activity (HCA).

Reasons: The proposed revisions identify the official delegated the authority to authorize exceptions to the policy in FAR 3.601.

Subchapter B—Competition and Acquisition Planning

Part 3405 Publicizing Contract Actions

FAR: FAR Part 5 (Publicizing contract actions) regulates how agencies are to disseminate information on contract actions.

Current Regulations: The current EDAR contains provisions on notices to perform market surveys and paid advertisements. The regulations do not implement the procurement flexibility authorized by the PBO statute.

Proposed Regulations: We are proposing to revise 3405.2 (Synopses of proposed contract actions) to add four new sections implementing the PBO's authorities related to publicizing, including the PBO's authority related to modular contracting (3405.202 Exceptions and 3405.205 Special Situations), reduced response timeframes (3405.203 Publicizing and response time), and two-phase source selection (3405.207 Preparation and transmittal of synopses).

We are also proposing to add requirements to 3405.270 (Notices to perform market surveys) to require the contracting officer to include additional information in notices of proposed contract actions when anticipating a sole source contract.

Reasons: The proposed changes to 3405.2 would implement the PBO's authorities for modular contracting, which mandate notice of requirements under section 1018a(g)(5)(A–C). The proposed change to 3405.270 would increase availability of information to the marketplace when the Department anticipates a sole source contract.

Part 3406 Competition Requirements

FAR: FAR Part 6 (Competition requirements) regulates how agencies compete various contract actions.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: Proposed 3406.001 (Applicability) would state that this part of the FAR does not apply to modular contracting performed by the PBO.

Proposed 3406.3 (Other than full and open competition) would add new 3406.302–5 (Authorized or required by statute) stating that the PBO can award noncompetitive awards as part of its modular contracting authority.

Proposed 3406.5 (Competition advocates) would identify the Department's Competition Advocate.

Reasons: The proposed change to add this part would implement the PBO's modular contracting authority authorized by statute and identify the Competition Advocate mandated in FAR 6.5.

Part 3408 Required Sources of Supplies and Services

FAR: FAR Part 8 (Required sources of supplies and services) mandates certain sources and details how agencies must use those sources.

Current Regulations: The current EDAR requires a clause in subpart 3408.8 (Acquisition of printing and related supplies) and addresses paperwork reduction in part 3427.

Proposed Regulations: The proposed changes to 3452.208–71 (Printing) would update the definition of "unit" to match the definition in the Government Printing and Binding Regulations. Specifically, the allowable size counted as one unit is changed from an 8.5″ x 11″ page to an image size of 10.75″ x 14.25″ on an 11″ x 17″ page. The proposed inclusion of 3408.871 (Paperwork Reduction) in this part would move the prescription for the paperwork reduction clause to the appropriate section of the EDAR.

Reasons: The proposed changes would update the EDAR to match the Government Printing and Binding Regulations and the FAR structure.

Part 3409 Contractor Qualifications

FAR: FAR Part 9 (Contractor Qualifications) includes sections on debarment, suspension, and ineligibility, as well as organizational and consultant conflicts of interest.

Current Regulations: The current EDAR does not adequately cover the

topics of debarment, suspension, and ineligibility or organizational conflict of interest.

Proposed Regulations: The proposed changes in 3409.4 (Debarment, suspension, and ineligibility) and 3409.5 (Organizational and consultant conflicts of interest) would provide additional details regarding these issues.

Proposed 3409.401 (Applicability) would indicate that this subsection does not apply to non-procurement debarment and suspension.

Proposed 3409.403 (Definitions) would designate the Senior Procurement Executive as the Department's debarring official and suspending official.

The proposed changes to 3409.406–3 (Procedures) would provide additional detail regarding the steps involved in the debarment process.

Proposed 3409.407–3 (Procedures) would provide similar, additional detail on the steps involved in the suspension process.

We are proposing to revise 3409.506 (Procedures) to give the HCA flexibility to terminate or not terminate contracts in cases of conflict of interest, and designate the HCA, rather than the Senior Procurement Executive, as the authorized reviewer and decision maker in such matters.

We are proposing to add 3409.507 (Solicitation provision and contract clause), to add prescriptions requiring contracting officers to include the provision in 3452.209–70 (Conflict of interest certification) and the clause at 3452.209–71 (Conflict of interest) in all solicitations and contracts, respectively, for services above the simplified acquisition threshold. We are proposing to add 3409.570 (Certification at or below the simplified acquisition threshold), which describes the conflict of interest certification that contractors make when entering into a contract with the Department at or below the simplified acquisition threshold.

Reasons: The proposed changes to the regulations would more clearly and completely describe agency procedures that implement the sections of the FAR pertaining to suspension, debarment, and conflicts of interest. Publication of agency procedures on these matters would be beneficial to the contractor community.

Part 3412 Acquisition of Commercial Items

FAR: FAR Part 12 (Acquisition of commercial items) describes the methods of purchasing commercial products and services.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: Proposed 3412.203 (Procedures for solicitation, evaluation, and award) would specify that the PBO has the authority to use simplified acquisition procedures for commercial items without regard to dollar or timeframe limitations.

Proposed 3412.302 (Tailoring of provisions and clauses for the acquisition of commercial items) would identify the HCA as the person who is authorized to approve waivers allowing COs to tailor provisions and clauses for the acquisition of commercial items.

Reasons: These proposed changes implement the PBO's contracting authority, as well as identify the individual authorized to provide the waivers required in FAR 12.302 when a Contracting Officer needs to tailor provisions and clauses for the acquisition of commercial items.

Subchapter C—Contracting Methods and Contract Types

Part 3413 Simplified Acquisition Procedures

FAR: FAR Part 13 (Simplified acquisition procedures) allows and describes streamlined ways of purchasing goods and services below the simplified acquisition threshold.

Current Regulations: The current EDAR includes 3413.107 (Solicitation and evaluation of quotations), which requires use of certain FAR Part 15 procedures when conducting a simplified acquisition.

Proposed Regulations: We propose to remove 3413.107 (Solicitation and evaluation of quotations) in order to eliminate the requirement to use certain part 15 procedures when conducting a simplified acquisition.

Proposed 3413.003 (Policy) would explain the PBO's authority to use simplified acquisition procedures for commercial items without regard to the dollar or timeframe limitations in FAR 13.5 and explains the PBO's authority to use simplified acquisition procedures for competitively awarded noncommercial items contracts up to $1,000,000 when the procurement is a small business set-aside.

Proposed 3413.303 would allow use of blanket purchase agreements for commercial items up to the threshold of the test program for certain commercial items in FAR 13.500(a).

Reasons: The proposed updates to this part would improve the Department's implementation of FAR Part 13 by removing overly restrictive regulations and by implementing the PBO's authority in section 1018a(e). The current 3413.107 (Solicitation and evaluation of quotations) requires the contracting officer to use FAR Part 15 (Contracting by negotiation) procedures in simplified acquisitions. The simplified acquisition procedures in the FAR are designed to maximize the Department's flexibility. The proposed addition in 3413.303 would allow the Department to use a procurement flexibility authorized in the FAR by allowing use of blanket purchase agreements for commercial items over the simplified acquisition threshold, under the test program for certain commercial items in FAR 13.5.

Part 3414 Sealed Bidding

FAR: FAR Part 14 (Sealed bidding) describes the rules and requirements for using sealed bidding as a method of acquisition.

Current Regulations: The current EDAR identifies the HCA as the official authorized to make determinations under FAR 14.407–3.

Proposed Regulations: We propose to renumber 3414.407 (Mistakes in bids) to match the FAR numbering system.

Reasons: This proposed change would update the EDAR to follow the FAR numbering scheme.

Part 3415 Contracting by Negotiation

FAR: FAR Part 15 (Contracting by negotiation) sets forth procedures for acquiring goods and services through negotiated procurement.

Current Regulations: The current EDAR contains outdated requirements on order of precedence and setting profit prenegotiation objectives, and does not address the PBO's authorities, such as two-phase source selection.

Proposed Regulations: The proposed change to 3415.2 (Solicitation and receipt of proposals and information) would renumber the current 3415.407 (Solicitation provisions) to 3415.209 (Solicitation provisions) to match the FAR numbering of the relevant information. The proposed change to 3415.209(a) would reflect the new numbering of the clause referenced in the paragraph (52.215–1(e)).

Removal of 3415.4 (Solicitation and receipt of proposals and quotations) would eliminate the prescriptive language for an order of precedence clause (3452.215–33).

Proposed 3415.302–70 (Two-phase source selection) would implement the PBO's authority to use a two-phase process to solicit offers and select a source for award.

We are proposing to revise 3415.606 (Agency procedures) to add an HCA-designee as a possible point of contact

for coordination of unsolicited proposals.

Removal of 3415.9 (Profit) would eliminate the requirement for contracting officers to use a certain framework when developing prenegotiation profit objectives.

Reasons: The proposed changes to this section would implement section 1018a(d), eliminate unnecessary requirements on the development of prenegotiation profit objectives, and eliminate unnecessary variation from the FAR-provided clause on order of precedence.

Part 3416 Types of Contracts

FAR: FAR Part 16 (Types of contracts) describes the various contract types and considerations in determining the type of contract to use for a particular acquisition.

Current Regulations: The current EDAR includes requirements relating to negotiated overhead rates in agreements, under FAR 16.7, as well as requirements we propose to leave unchanged, dealing with cost-sharing contracts, contract clauses on cost, and letter contracts.

Proposed Regulations: Proposed 3416.402–2 (Performance incentives) would authorize the Department to use a type of contracting called "award-term contracting" for performance-based contracts or task orders. This section refers the reader to EDAR 3416.470 for the definition of award-term contracting and implementation guidelines.

Proposed 3416.470 (Award-term contracting) would establish policy and procedures for using this type of incentive contracting.

We are proposing to remove 3416.7 (Agreements), which in 3416.701 had provided the prescriptive language for the clause at 3452.216–71 (Negotiated Overhead Rates—Fixed) and in 3416.702 had addressed negotiated overhead rates for Basic Agreements.

Reasons: The proposed addition of the section on award-term contracting would provide the CO with guidance on how to use existing procurement flexibilities allowed under the FAR. The proposed removal of 3416.7 would eliminate unnecessary regulation. The inclusion of overhead rates is permitted by the FAR at the contracting officer's discretion, so the prescription at 3416.7 is unnecessary.

Part 3417 Special Contracting Methods

FAR: FAR Part 17 (Special contracting methods) describes requirements for options and interagency acquisitions under the Economy Act.

Current Regulations: The current EDAR includes one paragraph in this part, under 3417.207 (Exercise of options), which specifies that "after funds become available" means "after funds become available to the contracting officer for obligation."

Proposed Regulations: We propose to add 3417.204 (Contracts), 3417.5 (Interagency acquisition under the Economy Act), and 3417.70 (Modular contracting). We also propose to modify 3417.207 (Exercise of options).

Proposed 3417.204 (Contracts) would provide that the Department may enter into contracts that exceed the five-year limitation specified in FAR 17.204(e), subject to approval by the HCA for individual contracts or the SPE for classes of contracts.

Proposed 3417.207 (Exercise of options) would add paragraph (f)(2) to explain that the government can accept price reductions offered by contractors at any time during performance of a contract, and that these reductions are not renegotiations if they were not requested by the government.

We propose to add 3417.5 (Interagency acquisitions under the Economy Act), which would address interagency acquisitions procured by the PBO under section 1018a(j).

Proposed 3417.70 (Modular contracting) would detail the PBO's authority to perform successive procurements for systems.

Reasons: FAR 17.204(e) allows agencies to approve contract periods for longer than five years. Implementing this regulation in the EDAR would allow the Department more flexibility in contracting. The other proposed changes to this part would implement the PBO's modular contracting authority.

Subchapter D—Socioeconomic Programs

3419 Small Business Programs

FAR: FAR Part 19 (Small Business Programs) describes requirements for and availability of contracting preference programs for small businesses.

Current Regulations: The current regulations are outdated and address parts of the FAR that no longer exist.

Proposed Regulations: Proposed 3419.201–70 (Office of Small and Disadvantaged Business Utilization (OSDBU)) would describe the role of the OSDBU in implementing FAR 19.201.

Proposed 3419.502–4 (Methods of conducting set-asides) would allow the PBO to procure noncommercial services using simplified acquisition procedures if the procurement does not exceed $1,000,000, is conducted as a small business set-aside, the price charged for supplies associated with the services procured is expected to be less than 20 percent of the total contract price, and the contract is not awarded on a sole-source basis and is not for construction. We are proposing to remove 3419.7 (Subcontracting with Small Business and Small Disadvantaged Business Concerns) and 3419.8 (Contracting with the Small Business Administration (The 8(a) Program).

Reasons: These proposed changes would update the Department's implementation of the FAR and include the PBO's contracting authorities under the PBO's authorizing statute, section 1018a(e) (Use of simplified procedures for commercial items).

The proposed removal of 3419.7 would eliminate requirements that are redundant with current FAR requirements. EDAR 3419.705–2 (Determining the need for a subcontracting plan) includes instructions to the contracting officer on determining the dollar threshold for requirement of a subcontracting plan. The FAR adequately addresses this issue in 19.705–2 (Determining the need for a subcontracting plan). EDAR 3419.708 (Solicitation provisions and contract clauses) currently requires the contracting officer to include in solicitations that include clause 52.219–9 a notification that advises prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range. However, the FAR notifies offerors of the requirements for submitting subcontracting plans in the clauses requiring submission of the plans (52.219–9, Small business subcontracting plan, and its alternates I and II).

The proposed removal of 3419.8 would eliminate this subpart that implemented FAR 19.8, which has changed so significantly as to make 3419.8 irrelevant. Section 3419.801 currently refers to a section of the FAR (19.801) that is no longer in use. Section 3419.870 currently details a source selection procedure no longer relevant due to the detailed source selection procedures in the updated FAR 19.8.

3422 Application of Labor Laws to Government Acquisitions

FAR: FAR Part 22 (Application of labor laws to government acquisitions) describes various laws, policies, and prohibitions governing Federal acquisition.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: We propose to add 3422.10 (Service Contract Act of 1965, as amended) to explain that the 5-year limitation in the Service Contract

Act of 1965, as amended (Service Contract Act), applies to each period of the contract individually, not to the cumulative period of base and option years, and that accordingly no Department contract will have a base or option period longer than five years.

Reasons: This proposed language is based on the Department of Labor's definition of "contract" as it applies to the Service Contract Act. This definition is set forth in the Department of Labor's regulations at 29 CFR 4.143(b) and 29 CFR 4.145(a), which state that an extension of a term of a contract—by option or other means—is a wholly new contract with respect to the Service Contract Act.

3424 Protection of Privacy and Freedom of Information

FAR: FAR Part 24 (Protection of privacy and freedom of information) provides guidance on protection of individual privacy and the Freedom of Information Act.

Current Regulations: The current EDAR includes implementing language for protection of individual privacy, and directs the public to the Department's regulations implementing the Freedom of Information Act.

Proposed Regulations: We propose to add 3424.170 (Protection of human subjects) which would prescribe a solicitation provision and contract clause intended to protect the personal information of anyone involved in research activities of the Department.

We also propose to add 3424.203 (Policy) to state the Department's policy on Freedom of Information Act requests and to provide prescriptive language for clause 3452.224–70, (Release of information under the Freedom of Information Act).

Reasons: The proposed changes are intended to protect personally identifiable information and to better inform the public of the Department's policy with respect to the Freedom of Information Act.

3425 Foreign Acquisition

FAR: FAR Part 25 (Foreign acquisition) implements the Buy American Act.

Current Regulations: The current EDAR designates the HCA as the approving official for determinations relating to the Buy American Act, and also implements a section of the FAR that no longer exists.

Proposed Regulations: We propose to remove 3425.2 (Balance of payments program) to eliminate outdated language.

Reasons: This proposed change is based on a FAR change that eliminated the need for this section of the EDAR.

Subchapter E—General Contracting Requirements

3427 Patents, Data, and Copyrights

FAR: FAR Part 27 (Patents, data, and copyrights) regulates patents, copyrights, rights in data, and foreign license and technical agreements under Federal contracts.

Current Regulations: The current EDAR includes in this part prescriptions for clauses on publication and publicity, advertising of awards, and paperwork reduction.

Proposed Regulations: We propose to add 3427.409 (Solicitation provisions and contract clauses) to consolidate the prescriptions for clauses 3452.227–70 (Publication and publicity) and 3452.227–71 (Advertising of awards).

Proposed 3427.409(c) would provide the prescriptive language for clause 3452.227–72 (Use and non-disclosure agreement) and proposed 3427.409(d) would provide the prescriptive language for clause 3452.227–73 (Limitations on the use or disclosure of Government-furnished information marked with restrictive legends).

As previously discussed, we are proposing to move the prescription for use of the clause at 3452.208–72 (Paperwork reduction) to 3408.871.

Reasons: The consolidation of the prescriptive language for clauses 3452.227–70 (Publication and publicity) and 3452.227–71 (Advertising of awards) is intended to bring clarity to this part and to make the EDAR structure consistent with the FAR structure. The proposed addition of the Use and non-disclosure agreement and the Limitations on the use or disclosure of Government-furnished information marked with restrictive legends clauses, 3452.227–72 and 3452.227–73, respectively, is intended to protect data from unauthorized disclosure. Moving the Paperwork reduction clause prescription from 3427.471 to 3408.871 (Paperwork reduction) would make the EDAR structure consistent with the FAR structure.

3432 Contract Financing

FAR: FAR Part 32 (Contract financing) regulates the types of financing the Government may make available to contractors, including advance payments.

Current Regulations: The current EDAR includes a prescription for a "Method of payment" clause in 3432.170 (Method of payment), includes designation of the HCA as the official authorized to authorize types of financing in 3432.4 (Advance Payments), and includes instructions to contractors in 3432.704 (Limitation of cost or funds). The current EDAR also includes a prescription for clause 3452.232–70 (Prohibition against the use of ED funds to influence legislation or appropriations) in 3432.770 (Prohibition against the use of ED funds to influence legislation or appropriations), and includes a prescription for an incremental funding provision in 3432.771 (Provision for incremental funding).

Proposed Regulations: We are proposing to remove 3432.170 (Method of payment) to eliminate outdated regulations. We are proposing to add 3432.705–2 (Clauses for limitation of cost or funds), which prescribes the use of clause 3452.232–70 (Limitation of cost or funds) and the provision in 3452.232–71 (Incremental funding). We are proposing to remove the current 3432.704 (Limitation of cost or funds), 3432.770 (Prohibition against the use of ED funds to influence legislation or appropriations), and 3432.771 (Provision for incremental funding).

Reasons: The proposed removal of the Method of payment clause is intended to eliminate outdated information about being paid by check or wire transfer. The Department no longer pays contractors by check or wire transfer.

The proposed addition of 3432.705–2 and removal of current 3432.704 and 3432.771 reorganizes and updates the information for incrementally funded contracts. The current EDAR section on Limitation of cost or funds (3432.704) also contains requirements for contractors to follow during performance of incrementally funded contracts. Requirements of this type should be communicated to contractors in contract clauses, not in the body of the regulation. Therefore, we are proposing to include these requirements in clause 3452.232–70 (Limitation of cost or funds) instead of in the current section of the EDAR (3432.704).

The proposed removal of 3432.770 would eliminate a redundant prohibition on using ED funds in lobbying. The restrictions in FAR Part 31 already prohibit contractors from spending Government funds on these activities.

3433 Protests, Disputes, and Appeals

FAR: FAR Part 33 (Protests, disputes, and appeals) sets forth the rules for handling these types of actions.

Current Regulations: The current EDAR includes information on protests, disputes, and appeals, and references

outdated information on a board of contract appeals that no longer exists.

Proposed Regulations: We propose to remove unnecessary regulations currently in 3433.1 (Protests) and 3433.2 (Disputes and appeals). We propose to add a paragraph at 3433.103 to designate the HCA as the agency official identified in FAR 33.103(f)(3).

Reasons: The proposed changes would eliminate outdated and unnecessary information. The information contained in the current 3433.103 (Protests to the agency) is redundant with the information contained in FAR 33.103 (Protests to the agency). The current 3433.2 (Disputes and appeals) references a Board of Contract Appeals that no longer exists.

Subchapter F—Special Categories of Contracting

3437 Service Contracting

FAR: FAR Part 37 (Service contracting) regulates various types of service contracts and performance-based acquisition.

Current Regulations: The current EDAR contains 3437.270 (Consulting services reporting clause), which was eliminated by a class deviation in 1988. The EDAR also contains 3437.271 (Services of consultants clause), which prescribes the use of clause 3452.237–71 (Services of consultants) in all cost-reimbursement contracts and solicitations. This clause requires the contractor to obtain the contracting officer's written approval to use certain consultants under their contract.

Proposed Regulations: We propose adding 3437.170, which would require the inclusion of language set forth in clause 3452.237–71 (Observance of administrative closures) in all solicitations and contracts for services. We propose removing 3437.270 (Consulting services reporting clause).

We propose changing the number of 3437.271 (Services of consultants clause) to 3437.270, because that number would be available if the current 3437.270 is removed. We propose changing the prescription in 3437.270 (Services of consultants clause) to exclude FSA from the requirements of the clause.

Finally, we propose adding 3437.670 (Contract type) which would state that award-term contracting can be used in performance-based contracts and orders, if approved by the HCA.

Reasons: The proposed addition of the clause at 3452.237–71 (Observance of administrative closures) is intended to clarify the Department's policy on whether contractor work is required when the Government is closed.

The proposed change to the prescription for use of the clause at 3452.237–70 (Services of consultants) is intended to implement section 1018a(c).

The proposed new subsection on contract type is intended to authorize the use of award-term contracting. This change is necessary because although the current EDAR does not address this subject, award-term contracting is allowed under the FAR and used across the government. This change to the EDAR would clarify that the Department allows and intends for COs to use this procurement flexibility.

439 Acquisition of Information Technology

FAR: FAR Part 39 (Acquisition of information technology) regulates the acquisition of information technology.

Current Regulations: The current EDAR does not address this FAR part.

Proposed Regulations: We propose adding 3439.70 (Department requirements for the acquisition of information technology). In this subpart, we propose adding 3439.701 (Internet protocol version 6) to require the contracting officer to insert the clause at 3452.239–70 (Internet protocol version 6 (IPv6)), in all solicitations and resulting contracts for hardware and software. This clause requires contractors to comply with certain standard protocols when developing software or systems.

We are proposing to add 3439.702 (Department security requirements), to require the contracting officer to include the Notice to offerors of Department security requirements (3452.239–71) provision and the clause at 3452.239–72 (Department security requirements) when contractor employees will have access to Department-controlled facilities or space, or when the work (wherever located) involves the design, operation, repair, or maintenance of information systems and access to sensitive but unclassified information.

Finally, we are proposing the addition of 3439.703 (Federal desktop core configuration (FDCC) compatibility), which would require the contracting officer to include the clause at 3452.239–73 (Federal desktop core configuration (FDCC) compatibility) in all solicitations and contracts where software will be developed, maintained, or operated on any system using the FDCC configuration. This clause requires software used on FDCC computers to be FDCC-compatible.

Reasons: These proposed changes are intended to implement multiple information technology initiatives and standards developed in the past several years by the information technology industry and adopted by the Government, including the Office of Management and Budget.

Subchapter F—Contract Management

3442 Contract Administration and Audit Services

FAR: FAR Part 42 (Contract administration and audit services) requires use of a contractor performance information system, contract monitoring, and governs other contract administration functions.

Current Regulations: The current EDAR contains an obsolete delegation of authority in 3442.705 (Final indirect cost rates), a section at 3442.7001 prescribing the use of clause 3452.242–72 (Withholding of contract payments), and sections in 3443.7002 on the Litigation and claims clause, 3442.7003 regarding the Delays clause, and 3442.71 on the Department's policy on accessibility to persons with disabilities.

Proposed Regulations: We are proposing to remove 3442.7 (Indirect cost rates) which had delegated authority to establish final indirect cost rates to the Chief of the Cost Determination Branch in Grants and Contracts Services.

We are also proposing to remove 3442.7001 (Withholding of contract payments clause) and to renumber 3442.7002 (Litigation and claims clause) to 3442.7001, and 3442.7003 (Delays clause) to 3442.7002. We propose no change to 3442.71, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities.

Reasons: These proposed changes are intended to eliminate outdated information. The proposed removal of 3442.7 (Indirect cost rates) would remove the outdated delegation to establish final indirect cost rates. The FAR allows the contracting officer to make this determination (FAR 42.705).

We are proposing to remove 3442.7001 (Withholding of contract payments clause) because the language in this section allows the Department to withhold contract payments if any report required to be submitted by the contractor is overdue, or if the contractor fails to perform or deliver work or services as required by the contract. The Department's ability to withhold payment for non-performance is established in existing FAR clauses, based on the specific contract type and arrangement, and does not need to be repeated in the EDAR.

We are proposing to renumber 3442.7002 (Litigation and claims clause) to 3442.7001, and 3442.7003 (Delays clause) to 3442.7002, to use the number that would be available if the current

3442.7001 (Withholding of contract payments clause) is removed.

3443 Contract Modifications

FAR: FAR Part 43 (Contract modifications) provides guidance and requirements for changes to contracts.

Current Regulations: The current EDAR in 3443.106 (Contract clause) requires the inclusion of EDAR clause 3452.243–70 (Key personnel) in all cost-reimbursement contracts.

Proposed Regulations: We propose to renumber 3443.106 as 3443.107, to better align the EDAR numbering with the FAR. In addition, we propose a change to the language in newly renumbered 3443.107 to provide that the language in 3452.243–70 (Key personnel) would need to be included only in appropriate contracts.

Reasons: The current requirement to include the Key personnel clause in all cost-reimbursement contracts does not allow for contracting officer discretion in the use of this clause. The clause requires contractors to obtain contracting officer approval before changing the personnel assigned to the contract and designated in this clause as "key personnel." In some contracts, this designation and approval process is important to the success of the contract and to the Department's ability to adequately monitor the contract. In some contracts, this requirement is unnecessarily cumbersome, as the designation and approval process is not important to the success of the contract or the Department's ability to adequately monitor the contract.

The new prescription would require the contracting officer to insert a clause substantially the same as the Key personnel clause "in all solicitations and resultant contracts in which it will be essential for the contracting officer to be notified that a change of designated personnel is to take place by the contractor." This change in prescription would allow greater discretion in the use of this clause.

Subchapter H—Clauses and Forms

3452 Solicitation Provisions and Contract Clauses

FAR: FAR Part 52 (Solicitation provisions and contract clauses) is the part of the FAR containing all FAR provisions and clauses required or recommended for inclusion in solicitations and contracts, as prescribed in the preceding parts of the FAR.

Current Regulations: The current EDAR includes text for twenty-two provisions and clauses, all of which are prescribed in the preceding parts of the EDAR.

Proposed Regulations: We propose to add the Contracting Officer's Representative clause at 3452.201–70, to define the role and responsibility of that position.

The proposed Definitions—Department of Education clause at 3452.202–1 would be revised to remove the specific definitions in the current clause ("Secretary", "Head of the Agency", "contracting officer", "Contracting Officer's Technical Representative", "Department or ED", and "subcontract", and, instead, reference the FAR definitions at 2.101 and the EDAR definitions at 3402.101.

We are proposing renumbering the Paperwork Reduction Act clause from 3452.227–71 to 3452.208–72.

We are proposing a new Conflict of interest certification provision in 3452.209–70, which would require offerors to certify that they have identified actual or potential conflicts of interest.

We are proposing a new Conflict of interest clause at 3452.209–71, which would provide for potential criminal penalties for false certification regarding conflict of interest.

We are proposing to remove the Order of precedence clause at 3452.215–33, and instead use FAR clause 52.215–8 (Order of precedence—uniform contract format).

We are proposing to remove the Negotiated overhead rates—Fixed clause at 3452.216–71, which specifies procedures and policy for applying indirect rates to the contract. Applying indirect rates is adequately addressed in the FAR. We are proposing to add the Award-Term clause at 3452.216–71, which would provide information on the duration of an award-term contract, require an award-term plan, and provide guidance on making award determinations and on remedies available to contractors in award-term situations.

We are adding the Release of information under the Freedom of Information Act clause 3452.224–70, which would advise contractors of potential releases of information pursuant to the Freedom of Information Act.

The proposed Notice about research activities involving human subjects provision in 3452.224–71 and the proposed Research activities involving human subjects clause at 3452.224–72, would address the requirements found in 34 CFR part 97.

We are proposing to add the Use and non-disclosure agreement clause at 3452.227–72, which would protect contractor data from unauthorized disclosure by requiring the intended recipient to sign a use and non-disclosure agreement before receiving any proprietary data, technical data, or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure. We are proposing to remove the outdated Prohibition against the use of ED funds to influence legislation or appropriations clause at 3452.232–70.

The proposed Limitation of cost or funds clause at 3452.232–70 would provide the format and content of information to be provided by the contractor in cases of cost overruns.

We are proposing to revise the Incremental funding clause at 3452.232–71 by removing paragraph (b) of this clause, which had indicated that "the Limitation of Cost clause in FAR 52.232–20 shall supersede the Limitation of Funds clause in the event the contract becomes fully funded." The Limitation of cost clause is not prescribed for inclusion in an incrementally funded contract, so this paragraph is unnecessary. We are proposing to remove the Method of payment clause at 3452.232–72, which indicates that payment under the contract will be made either by check or by wire transfer, because the Department no longer makes payments in this manner.

The proposed amendment to paragraph (b) of the Services of consultants clause at 3452.237–70 would raise the default daily rate for consultants where contracting officer approval is required to an amount greater than $800.

We are proposing to add the Observance of administrative closures clause at 3452.237–71 to clarify the Department's policy on whether contractor work is required when the Government is closed. We are proposing to add the Internet protocol version 6 (IPv6) clause at 3452.239–70 to incorporate the Department's requirement for compliance with this protocol.

We are proposing to add the Notice to offerors of Department security requirements provision in 3452.239–71 and the Department security requirements clause at 3452.239–72 to incorporate the Department's updated security requirements.

We are proposing to add the Federal desktop core configuration (FDCC) compatibility clause at 3452.239–73 clause to incorporate the Department's requirement for compatibility with the FDCC.

We are proposing to change the prescription reference for the Litigation and claims clause at 3452.242–70.

We are proposing to reword and change the prescription reference for the Notice to the government of delays clause at 3452.242–71.

We are proposing to leave unchanged the Accessibility of meetings, conferences, and seminars to persons with disabilities clause at 3452.242–73.

We are proposing to amend the Key personnel clause at 3452.243–70, to provide for a listing of the labor category and name of key personnel to be listed in the contract.

We are proposing to amend the Foreign travel clause at 3452.247–70 to add travel to Puerto Rico, the U.S. Virgin Islands, and other U.S. territories as instances of foreign travel.

Reasons: The proposed changes to this part of the EDAR are consistent with the changes to the prescriptive language in the preceding parts, and would update the provisions and clauses to more accurately reflect current regulations and policy.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or local programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. The Secretary has determined that this regulatory action is not significant under section 3(f) of the Executive order.

Potential Costs and Benefits

This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the EDAR effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed regulatory action justify the costs.

We have determined, also, that this proposed regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*, as amended by the Small Business Regulatory Flexibility Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act, the Secretary certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The rule would update the EDAR; it would not directly regulate any small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

The EDAR is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 441 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 48 CFR Chapter 34

Government procurement.

Dated: August 6, 2010.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 48 of the Code of Federal Regulations by revising chapter 34 to read as follows:

TITLE 48—FEDERAL ACQUISITION REGULATIONS SYSTEM

CHAPTER 34—DEPARTMENT OF EDUCATION ACQUISITION REGULATION

PARTS 3400 to 3499

SUBCHAPTER A—GENERAL

Sec.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

SUBCHAPTER G—CONTRACT MANAGEMENT

SUBCHAPTER H—CLAUSES AND FORMS

SUBCHAPTER A—GENERAL

PART 3401—ED ACQUISITION REGULATION SYSTEM

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

3401.000 Scope of part.

The Federal Acquisition Regulation System brings together, in title 48 of the Code of Federal Regulations, the acquisition regulations applicable to all executive agencies of the Federal government. This part establishes a system of Department of Education (Department) acquisition regulations, referred to as the EDAR, for the codification and publication of policies and procedures of the Department that implement and supplement the Federal Acquisition Regulation (FAR).

Subpart 3401.1—Purpose, Authority, Issuance

3401.104 Applicability.

(a) The FAR and the EDAR apply to all Department contracts, as defined in FAR Part 2, except where expressly excluded.

(b) 20 U.S.C. 1018a provides the PBO with procurement authority and flexibility associated with sections (a)–(l) of the statute.

(c) For non-appropriated fund contracts, the FAR and EDAR will be followed to the maximum extent practicable, excluding provisions determined by the contracting officer, with the advice of counsel, not to apply to contracts funded with non-appropriated funds. Adherence to a process similar to those required by or best practices suggested by the FAR will not confer court jurisdiction concerning non-appropriated funds that does not otherwise exist.

3401.105 Issuance.

3401.105–2 Arrangement of regulations.

(c)(5) *References and citations.* The regulations in this chapter may be referred to as the Department of Education Acquisition Regulation or the EDAR. References to the EDAR are made in the same manner as references to the FAR. See FAR 1.105–2(c).

3401.105–3 Copies.

Copies of the EDAR in the **Federal Register** and Code of Federal Regulations (CFR) may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. An electronic version of the EDAR is available for viewing at: *http://www.ed.gov/policy/fund/reg/clibrary/edar.html.*

Subpart 3401.3—Agency Acquisition Regulations

3401.301 Policy.

(a)(1) Subject to the authorities in FAR 1.301(c) and other statutory authority, the Secretary of Education (Secretary) or delegate may issue or authorize the issuance of the EDAR. It implements or supplements the FAR and incorporates, together with the FAR, Department policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the Agency, including its suborganizations, and contractors or prospective contractors. The Head of Contracting Activity (HCA) for FSA may issue supplementary guidelines applicable to FSA.

3401.303 Publication and codification.

(a) The EDAR is issued as chapter 34 of title 48 of the CFR.

(1) The FAR numbering illustrations at *FAR 1.105–2* apply to the EDAR.

(2) The EDAR numbering system corresponds with the FAR numbering system. An EDAR citation will include the prefix "34" prior to its corresponding FAR part citation; e.g., FAR 25.108–2 would have corresponding EDAR text numbered as EDAR 3425.108–2.

(3) Supplementary material for which there is no counterpart in the FAR will be codified with a suffix beginning with "70" or, in cases of successive sections and subsections, will be numbered in the 70 series (i.e., 71–79). These supplementing sections and subsections will appear to the closest corresponding FAR citation; e.g., FAR 16.4 (Incentive Contracts) may be augmented in the EDAR by citing EDAR 3416.470 (Award Term) and FAR 16.403 (Fixed-price incentive contracts) may be augmented in the EDAR by citing EDAR 3416.403–

70 (Award fee contracts). (*Note:* These citations are for illustrative purposes only and may not actually appear in the published EDAR.) For example:

FAR	Is implemented as	Is augmented as
15	3415	3415.70.
15.1	3415.1	3415.170.
15.101	3415.101	3415.101–70.
15.101–1	3415.101–1	3415.101–1–70.
15.101–1(b)	3415.101–1(b)	3415.101–1(b)(70).
15.101–1(b)(1)	3415.101–1(b)(1)	3415.101–1(b)(1)(70).

(c) *Activity-Specific Authority.* Guidance that is unique to an organization with HCA authority contains that activity's acronym directly preceding the cite. The following activity acronyms apply:

FSA—Federal Student Aid.

3401.304 Agency control and compliance procedures.

(a) The EDAR is issued for Department acquisition guidance in accordance with the policies stated in FAR 1.301. The EDAR is subject to the same review procedures within the Department as other regulations of the Department.

Subpart 3401.4—Deviations

3401.401 Definition.

A deviation from the EDAR has the same meaning as a deviation from the FAR.

3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the Senior Procurement Executive (SPE).

3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Chief Acquisition Officer (CAO).

Subpart 3401.5—Agency and Public Participation

3401.501 Solicitation of agency and public views.

3401.501–2 Opportunity for public comments.

Unless the Secretary approves an exception, the Department issues the EDAR, including any amendments to the EDAR, in accordance with the procedures for public participation in 5 U.S.C. 553. Comments on proposed Department notices of proposed rulemaking may be made at *http://www.regulations.gov.*

Subpart 3401.6—Career Development, Contracting Authority, and Responsibilities

3401.601 General.

(a) Contracting authority is vested in the Secretary. The Secretary has delegated this authority to the Chief Acquisition Officer (CAO). The Secretary has also delegated contracting authority to the Senior Procurement Executive (SPE), giving the SPE broad authority to perform functions dealing with the management direction of the entire Department's procurement system, including implementation of its unique procurement policies, regulations, and standards. Limitations to the extent of this authority and successive delegations are set forth in the respective memorandums of delegations.

3401.602–3 Ratification of unauthorized commitments.

(a) *Definitions.* As used in this subpart, "commitment" includes issuance of letters of intent and arrangements for free vendor services or use of equipment with the promise or the appearance of commitment that a contract, modification, or order will, or may, be awarded.

(b) *Policy.*

(1) The HCA or Chief of the Contracting Office may, or may not, later ratify unauthorized commitments made by individuals without contracting authority or by contracting officers acting in excess of the limits of their delegated authority. Law and Regulation requires that only individuals acting within the scope of their authority make acquisitions. Within the Department, that authority vests solely with the Contracting Officer. Acquisitions made by other than authorized personnel are matters of serious misconduct. The employee may be held legally and personally liable for the unauthorized commitment.

(2) Ratifications do not require concurrence from legal counsel.

(3) The person who made the unauthorized commitment must prepare the request for approval that must be submitted through the person's manager to the approving official.

(4) The Chief of the Contracting Office may review and sign or reject ratification requests up to $25,000.

(5) All other ratification requests must be reviewed and signed or rejected by the HCA.

3401.670 Nomination and appointment of contracting officer's representatives (CORs).

3401.670–1 General.

(a) Program offices must nominate personnel for consideration of COR appointment in accordance with the Department's COR Policy Guide.

(b) The contracting officer must determine what, if any, duties will be delegated to a COR.

(c) The contracting officer may appoint as many CORs as is deemed necessary to support efficient contract administration.

(d) Only individuals with a written delegation of authority from a contracting officer may act in any capacity as a representative of that contracting officer, including any alternate, assistant, or back-up duties to the COR.

(e) For all contracts in which an information technology system exists, the System Security Officer for that system will perform all responsibilities necessary for contractor access to the system.

3401.670–2 Appointment.

COR appointments must be in accordance with the Department's COR Program Guide.

3401.670–3 Contract clause.

Contracting Officers must insert a clause substantially the same as the clause at 3452.201–70 (Contracting Officer's Representative (COR)), in all solicitations and contracts for which a COR will be (or is) appointed.

PART 3402—DEFINITIONS OF WORDS AND TERMS

Subpart 3402.1—Definitions

Sec.

3402.101 Definitions.

3402.101–70 Abbreviations and acronyms.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Subpart 3402.1—Definitions

3402.101 Definitions.

As used in this chapter—

Chief Acquisition Officer or *CAO* means the official responsible for monitoring the agency's acquisition activities, evaluating them based on applicable performance measurements, increasing the use of full and open competition in agency acquisitions, making acquisition decisions consistent with applicable laws, and establishing clear lines of authority, accountability, and responsibility for acquisition decision-making and developing and maintaining an acquisition career management program.

Chief of the Contracting Office means an official serving in the contracting activity (CAM or FSA Acquisitions) as the manager of a group that awards and administers contracts for a principal office of the Department. See also definition of *Head of the Contracting Activity* or *HCA* below.

Contracting Officer's Representative or *COR* means the person representing the Federal government for the purpose of technical monitoring of contract performance. The COR is not authorized to issue any instructions or directions that effect any increases or decreases in the scope of work or that would result in the increase or decrease of the cost or price of a contract or a change in the delivery dates or performance period of a contract.

Department or *ED* means the United States Department of Education.

Head of the Contracting Activity or *HCA* means those officials within the Department who have responsibility for and manage an acquisition organization and usually hold unlimited procurement authority. The Director, Federal Student Aid Acquisitions, is the HCA for FSA. The Director, Contracts and Acquisitions Management (CAM), is the HCA for all other Departmental program offices and all boards, commissions, and councils under the management control of the Department.

Performance-Based Organization or *PBO* is the office within the Department that is mandated by Public Law 105–244 to carry out Federal student assistance or aid programs and report to Congress on an annual basis. It may also be referred to as "Federal Student Aid."

Senior Procurement Executive or *SPE* means the single agency official appointed as such by the head of the agency and delegated broad responsibility for acquisition functions, including issuing agency acquisition policy and reporting on acquisitions agency-wide. The SPE also acts as the official one level above the contracting officer when the HCA is acting as a contracting officer.

3402.101–70 Abbreviations and acronyms.

CAO—Chief Acquisition Officer.

CO—Contracting Officer.

COR—Contracting Officer's Representative.

FSA—Federal Student Aid.

HCA—Head of the Contracting Activity.

IPv6—Internet Protocol version 6.

OMB—Office of Management and Budget.

OSDBU—Office of Small and Disadvantaged Business Utilization.

PBO—Performance-Based Organization (Federal Student Aid).

RFP—Request for Proposal.

SBA—Small Business Administration.

SPE—Senior Procurement Executive.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

The Contracting Officer must insert the clause at 3452.202–1 (Definitions—Department of Education) in all solicitations and contracts in which the clause at FAR 52.202–1 is required.

PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 3403.1—Safeguards

Sec.

Subpart 3403.2—Contractor Gratuities to Government Personnel

Subpart 3403.3—Reports of Suspected Antitrust Violations

Subpart 3403.4—Contingent Fees

Subpart 3403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

Authority: 5 U.S.C. 301.

Subpart 3403.1—Safeguards

3403.101 Standards of conduct.

3403.101–3 Agency regulations.

The Department's regulations on standards of conduct and conflicts of interest are in 34 CFR part 73, Standards of Conduct.

Subpart 3403.2—Contractor Gratuities to Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause at FAR 52.203–3 must be reported to the HCA in writing detailing the circumstances.

(b) The HCA evaluates the report with the assistance of the Designated Agency Ethics Officer. If the HCA determines that a violation may have occurred, the HCA refers the report to the SPE for disposition.

Subpart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

Any Departmental personnel who have evidence of a suspected antitrust violation in an acquisition must—

(1) Report that evidence through the HCA to the Office of the General Counsel for referral to the Attorney General; and

(2) Provide a copy of that evidence to the SPE.

Subpart 3403.4—Contingent Fees

3403.409 Misrepresentation or violations of the covenant against contingent fees.

Any Departmental personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees, must report the matter promptly in accordance with the procedures in 3403.203.

Subpart 3403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

Exceptions under FAR 3.601 must be approved by the HCA.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING PART 3405—PUBLICIZING CONTRACT ACTIONS

Subpart 3405.2—Synopses of Proposed Contract Actions

Sec.

Subpart 3405.5—Paid Advertisements

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Subpart 3405.2—Synopses of Proposed Contract Actions

3405.202 Exceptions.

(a)(15) FSA—Issuance of a synopsis is not required when the firm to be solicited has previously provided a module for the system under a contract that contained cost, schedule, and performance goals and the contractor met those goals.

3405.203 Publicizing and response time.

(c) FSA—Notwithstanding other provisions of the FAR, a bid or proposal due date of less than 30 days is permitted after issuance of a synopsis for acquisitions for noncommercial items. However, if time permits, a bid or proposal due date that affords potential offerors reasonable time to respond and fosters quality submissions should be established.

3405.205 Special situations.

(g) *FSA—Module of a previously awarded system.* Federal Student Aid must satisfy the publication requirements for sole source and competitive awards for a module of a previously awarded system by publishing a notice of intent on the governmentwide point of entry, not less than 30 days before issuing a solicitation. This notice is not required if a contractor who is to be solicited to submit an offer previously provided a module for the system under a contract that contained cost, schedule, and performance goals, and the contractor met those goals.

3405.207 Preparation and transmittal of synopses.

(c) FSA—In Phase One of a Two-Phase Source Selection as described in 3415.302–70, the contracting officer must publish a notice in accordance with FAR 5.2, except that the notice must include only the following:

(1) Notification that the procurement will be conducted using the specific procedures included in 3415.302–70.

(2) A general notice of the scope or purpose of the procurement that provides sufficient information for sources to make informed business decisions regarding whether to participate in the procurement.

(3) A description of the basis on which potential sources are to be selected to submit offers in the second phase.

(4) A description of the information that is to be required to be submitted if the request for information is made separate from the notice.

(5) Any other information that the contracting officer deems is appropriate.

(h) FSA—When modular contracting authority is being utilized, the notice must invite comments and support if it is believed that modular contracting is not suited for the requirement being procured.

3405.270 Notices to perform market surveys.

(a) If a sole source contract is anticipated, the issuance of a notice of a proposed contract action that is detailed enough to permit the submission of meaningful responses and the subsequent evaluation of the responses by the Federal government constitutes an acceptable market survey.

(b) The notice must include—

(1) A clear statement of the supplies or services to be procured;

(2) Any capabilities or experience required of a contractor and any other factor relevant to those requirements;

(3) A statement that all responsible sources submitting a proposal, bid, or quotation must be considered;

(4) Name, business address, and phone number of the Contracting Officer; and

(5) Justification for a sole source and the identity of that source.

Subpart 3405.5—Paid Advertisements

3405.502 Authority.

Authority to approve publication of paid advertisement in newspapers is delegated to the HCA.

PART 3406—COMPETITION REQUIREMENTS

Sec.

Authority: 5 U.S.C. 301; 41 U.S.C. 418(a) and (b); and 20 U.S.C. 1018a.

3406.001 Applicability.

(b) FSA—This part does not apply to proposed contracts and contracts awarded based on other than full and open competition when the conditions for successive systems modules set forth in EDAR 3417.70, Modular Contracting, are utilized.

Subpart 3406.3—Other Than Full and Open Competition

3406.302–5 Authorized or required by statute.

(a) *Authority.*

(1) Citations: 20 U.S.C. 1018a.

(2) Noncompetitive awards of successive modules for systems are permitted when the conditions set forth in EDAR 3417.70 are met.

Subpart 3406.5—Competition Advocates

3406.501 Requirement.

The Competition Advocate for the Department is the Deputy Director, Contracts and Acquisitions Management.

PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 3408.8—Acquisition of Printing and Related Supplies

Sec.

Authority: 5 U.S.C. 301, unless otherwise noted.

Subpart 3408.8—Acquisition of Printing and Related Supplies

(44 U.S.C. 501)

3408.870 Printing clause.

The contracting officer must insert the clause at 3452.208–71 (Printing) in all solicitations and contracts other than purchase orders.

3408.871 Paperwork reduction.

The Contracting Officer must insert the clause at 3452.208–72 (Paperwork Reduction Act) in all solicitations and contracts in which the contractor will develop forms or documents for public use.

PART 3409—CONTRACTOR QUALIFICATIONS

Subpart 3409.4—Debarment, Suspension, and Ineligibility

Sec.

Authority: 5 U.S.C. 301.

Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.400 Scope of subpart.

This subpart implements FAR subpart 9.4 by detailing policies and procedures governing the debarment and suspension of organizations and individuals from participating in ED contracts and subcontracts.

3409.401 Applicability.

This subpart applies to all procurement debarment and suspension actions initiated by ED. This subpart does not apply to nonprocurement debarment and suspension.

3409.403 Definitions.

The SPE is designated as the "debarring official" and "suspending official" as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.406 and FAR 9.407.

3409.406 Debarment.

3409.406–3 Procedures.

(b) *Decision making process.*

(1) Contractors proposed for debarment may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment. The contractor must submit additional information within 30 days of receipt of the notice of proposal to debar, as described in FAR 9.406–3(c).

(2) In actions not based upon a conviction or civil judgment, if the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, the contractor may request a fact-finding conference. If the Debarring Official determines that there is a genuine dispute of material fact, the Debarring Official will conduct fact-finding and base the decision in accordance with FAR 9.406–3(b)(2) and (d)–(f).

3409.407 Suspension.

3409.407–3 Procedures.

(b) *Decision making process.*

(1) Contractors suspended in accordance with FAR 9.407 may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension. The contractor must submit this information and argument within 30 days of receipt of the notice of suspension, as described in FAR 9.407–3(c).

(2) In actions not based upon an indictment, if the contractor's submission in opposition raises a genuine dispute over facts material to the suspension an dif no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the contractor may request a fact-finding conference. The Suspending Official will conduct fact-finding and base the decision in accordance with FAR 9.407–3(b)(2) and (d)-(e).

Subpart 3409.5—Organizational and Consultant Conflicts of Interest

3409.502 Applicability.

This subpart applies to all ED contracts except contracts with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

3409.503 Waiver.

The HCA is designated as the official who may waive any general rule or procedure of FAR Subpart 9.5 or of this subpart.

3409.506 Procedures.

(a) If the effects of a potential or actual conflict of interest cannot be avoided, neutralized, or mitigated before award, the prospective contractor is not eligible for that award. If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized, or mitigated, ED will terminate the contract unless the HCA deems continued performance to be in the best interest of the Federal government.

(b) The HCA is designated as the official to conduct reviews and make final decisions under FAR 9.506(b) and (c).

3409.507 Solicitation provision and contract clause.

3409.507–1 Solicitation provision.

The contracting officer must insert the provision in 3452.209–70 (Conflict of interest certification) in all solicitations for services above the simplified acquisition threshold.

3409.507–2 Contract clause.

The contracting officer must insert the clause at 3452.209–71 (Conflict of interest) in all contracts for services above the simplified acquisition threshold. The clause is applicable to each order for services over the simplified acquisition threshold under task order contracts.

3409.570 Certification at or below the simplified acquisition threshold.

By accepting any contract, including orders against any Schedule or Government-wide Acquisition Contract (GWAC), with the Department at or below the simplified acquisition threshold:

(a) The contractor warrants that, to the best of the contractor's knowledge and belief, there are no relevant facts or circumstances that would give rise to an organizational conflict of interest, as defined in FAR Subpart 2.1, or that the Contractor has disclosed all such relevant information.

(b) The contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the contractor will make an immediate full disclosure in writing to the contracting officer. This disclosure must include a description of actions that the contractor has taken or proposes to take, after consultation with the contracting officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) The contractor agrees that:

(1) The Government may terminate this contract for convenience, in whole or in part, if such termination is necessary to avoid an organizational conflict of interest.

(2) The Government may terminate this contract for default or pursue other remedies permitted by law or this contract if the contractor was aware or should have been aware of a potential organizational conflict of interest prior to award, or discovers or should have discovered an actual or potential conflict after award, and does not disclose, or misrepresents, relevant information to the contracting officer regarding the conflict.

(d) The contractor further agrees to insert provisions that substantially conform to the language of this section, including this paragraph (d), in any subcontract or consultant agreement hereunder.

PART 3412—ACQUISITION OF COMMERCIAL ITEMS

Subpart 3412.2—Special Requirements for the Acquisition of Commercial Items

Sec.

3412.203 Procedures for solicitation, evaluation, and award.

Subpart 3412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

3412.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Subpart 3412.2—Special Requirements for the Acquisition of Commercial Items

3412.203 Procedures for solicitation, evaluation, and award.

As specified in 3413.003, simplified acquisition procedures for commercial items may be used without regard to any dollar or timeframe limitations described in FAR 13.5 when acquired by the FSA and used for its purposes.

Subpart 3412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

3412.302 Tailoring of provisions and clauses for the acquisition of commercial items.

The HCA is authorized to approve waivers in accordance with FAR 12.302(c). The approved waiver may be either for an individual contract or for a class of contracts for the specific item. The approved waiver and supporting documentation must be incorporated into the contract file.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 3413—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
3413.000 Scope of part.
3413.003 Policy.

Subpart 3413.3—Simplified Acquisition Methods

3413.303 Blanket purchase agreements (BPAs).
3413.303–5 Purchases under BPAs.

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

3413.000 Scope of part.

3413.003 Policy.

(c)(1)(iii) FSA—FSA may use simplified acquisition procedures for commercial items without regard to any dollar or timeframe limitations described in FAR 13.5.

(iv) FSA—FSA may use simplified acquisition procedures for non-commercial items up to $1,000,000 when the acquisition is set aside for small businesses, pursuant to EDAR 3419.502.

Subpart 3413.3—Simplified Acquisition Methods

3413.303 Blanket purchase agreements (BPAs).

3413.303–5 Purchases under BPAs.

(b) Individual purchases under blanket purchase agreements for commercial items may exceed the simplified acquisition threshold but shall not exceed the threshold for the test program for certain commercial items, in FAR 13.500(a).

PART 3414—SEALED BIDDING

Subpart 3414.4—Opening of Bids and Award of Contract

Sec.
3414.407 Mistakes in bids.
3414.407–3 Other mistakes disclosed before award.

Authority: 5 U.S.C. 301.

Subpart 3414.4—Opening of Bids and Award of Contract

3414.407 Mistakes in bids.

3414.407–3 Other mistakes disclosed before award.

Authority is delegated to the HCA to make determinations under FAR 14.407–3(a)–(d).

PART 3415—CONTRACTING BY NEGOTIATION

Subpart 3415.2—Solicitation and Receipt of Proposals and Information

Sec.
3415.209 Solicitation provisions and contract clauses.

Subpart 3415.3—Source Selection

3415.302 Source selection objective.
3415.302–70 Two-phase source selection.

Subpart 3415.6—Unsolicited Proposals

3415.605 Content of unsolicited proposals.
3415.606 Agency procedures.

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Subpart 3415.2—Solicitation and Receipt of Proposals and Information

3415.209 Solicitation provisions and contract clauses.

(a) The Freedom of Information Act (FOIA), 5 U.S.C. 552, may require ED to release data contained in an offeror's proposal even if the offeror has identified the data as restricted in accordance with the provision in FAR 52.215–1(e). The solicitation provision in 3452.215–70 (Release of restricted data) informs offerors that ED is required to consider release of restricted data under FOIA and Executive Order 12600.

(b) The contracting officer must insert the provision in 3452.215–70, in all solicitations that include a reference to FAR 52.215–1 (Instructions to Offerors—Competitive Acquisitions).

Subpart 3415.3—Source Selection

3415.302 Source selection objective.

3415.302–70 Two-phase source selection.

(a) FSA—May utilize a two-phase process to solicit offers and select a source for award. The contracting officer can choose to use this optional method of solicitation when deemed beneficial to the FSA in meeting its needs as a PBO.

(b) *Phase One.*

(1) The contracting officer must publish a notice in accordance with FAR 5.2, except that the notice must include limited information as specified in EDAR 3405.207.

(2) *Information Submitted by Offerors.* Each offeror must submit basic information such as the offeror's qualifications, the proposed conceptual approach, costs likely to be associated with the approach, and past performance data, together with any additional information requested by the contracting officer.

(3) *Selection for participating in second phase.* The contracting officer must select the offerors that are eligible to participate in the second phase of the process. The contracting officer must limit the number of the selected offerors to the number of sources that the contracting officer determines is appropriate and in the best interests of the Federal government.

(c) *Phase Two.*

(1) The contracting officer must conduct the second phase of the source selection consistent with FAR 15.2 and 15.3, except as provided by EDAR 3405.207.

(2) Only sources selected in the first phase will be eligible to participate in the second phase.

Subpart 3415.6—Unsolicited Proposals

3415.605 Content of unsolicited proposals.

(d) Each unsolicited proposal must contain the following certification:

Unsolicited Proposal Certification By Offeror

This is to certify, to the best of my knowledge and belief, that—

a. This proposal has not been prepared under Federal government supervision;

b. The methods and approaches stated in the proposal were developed by this offeror;

c. Any contact with employees of the Department of Education has been within the limits of appropriate advance guidance set forth in FAR 15.604; and

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.
Date:

Organization:

Name:

Title:

(This certification must be signed by a responsible person authorized to enter into contracts on behalf of the organization.)

3415.606 Agency procedures.

(b)(1) The HCA or designee is the contact point to coordinate the receipt, control, and handling of unsolicited proposals.

(2) Offerors must direct unsolicited proposals to the HCA.

PART 3416—TYPES OF CONTRACTS

Subpart 3416.3—Cost-Reimbursement Contracts

Sec.
3416.303 Cost-sharing contracts.
3416.307 Contract clauses.

Subpart 3416.4—Incentive Contracts

3416.402 Application of predetermined, formula-type incentives.
3416.402–2 Performance incentives.
3416.470 Award-term contracting.

Subpart 3416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3416.603 Letter contracts.
3416.603–3 Limitations.

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Subpart 3416.3—Cost-Reimbursement Contracts

3416.303 Cost-sharing contracts.

(b) *Application.* Costs that are not reimbursed under a cost-sharing contract may not be charged to the Federal government under any other grant, contract, cooperative agreement, or other arrangement.

3416.307 Contract clauses.

(a) If the clause in FAR 52.216–7 (Allowable Cost and Payment) is used in a contract with a hospital, the contracting officer must modify the clause by deleting the words "Subpart 31.2 of the Federal Acquisition Regulation (FAR)" from paragraph (a) and substituting "34 CFR part 74, Appendix E."

(b) The contracting officer must insert the clause at 3452.216–70 (Additional cost principles) in all solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutions, hospitals, or organizations listed in Attachment C to Office of Management and Budget Circular A–122.

Subpart 3416.4—Incentive Contracts

3416.402 Application of predetermined, formula-type incentives.

3416.402–2 Performance incentives.

(b) Award-term contracting may be used for performance-based contracts or task orders. See EDAR 3416.470 for the definition of award-term contracting and implementation guidelines.

3416.470 Award-term contracting.

(a) *Definition.* Award-term contracting is a method, based upon a pre-determined plan in the contract, to extend the contract term for superior performance and to reduce the contract term for substandard or poor performance.

(b) *Applicability.* A Contracting Officer may authorize use of an award-term incentive contract for acquisitions where the quality of contractor performance is of a critical or highly important nature. The basic contract term may be extended on the basis of the Federal government's determination of the excellence of the contractor's performance. Additional periods of performance, which are referred to herein as "award terms," are available for possible award to the contractor. As award term(s) are awarded, each additional period of performance will immediately follow the period of performance for which the award term was granted. The contract may end at the base period of performance if the Federal government determines that the contractor's performance does not reflect a level of performance as described in the award-term plan. Award-term periods may only be earned based on the evaluated quality of the performance of the contractor. Meeting the terms of the contract is not justification to award an award-term period. The use of an award-term plan does not exempt the contract from the requirements of FAR 17.207, with respect to performing due diligence prior to extending a contract term.

(c) *Approvals.* The Contracting Officer must justify the use of an award-term incentive contract in writing. The award-term plan approving official will be appointed by the HCA.

(d) *Disputes.* The Federal government unilaterally makes all decisions regarding award-term evaluations, points, methodology used to calculate points, and the degree of the contractor's success. These decisions are not subject to the Disputes clause.

(e) *Award-term limitations.*

(1) Award periods may be earned during the base period of performance and each option period, except the last option period. Award-term periods may not be earned during the final option year of any contract.

(2) Award-term periods may not exceed twelve months.

(3) The potential award-term periods will be priced, evaluated, and considered in the initial contract selection process.

(f) *Implementation of extensions or reduced contract terms.*

(1) An award term is contingent upon a continuing need for the supplies or services and the availability of funds. Award terms may be cancelled prior to the start of the period of performance at no cost to the Federal government if there is not a continued need or available funding.

(2) The extension or reduction of the contract term is affected by a unilateral contract modification.

(3) Award-term periods occur after the period for which the award term was granted. Award-term periods effectively move option periods to later contract performance periods.

(4) Contractors have the right to decline the award of an award-term period. A contractor loses its ability to earn additional award terms if an earned Award-Term Period is declined.

(5) Changes to the contract award-term plan must be mutually agreed upon.

(g) *Clause.* Insert a clause substantially the same as the clause at 3452.216–71 (Award-term) in all solicitations and resulting contracts where an award-term incentive contract is anticipated.

Subpart 3416.6—Time and Materials, Labor-Hour, and Letter Contracts

3416.603 Letter contracts.

3416.603–3 Limitations.

If the HCA is to sign a letter contract as the contracting officer, the SPE signs the written determination under FAR 16.603–3.

PART 3417—SPECIAL CONTRACTING METHODS

Subpart 3417.2—Options

Sec.
3417.204 Contracts.
3417.207 Exercise of options.

Subpart 3417.5—Interagency Acquisitions Under the Economy Act

3417.502 General.

Subpart 3417.7—Modular Contracting

3417.70 Modular contracting.

Authority: 31 U.S.C. 1535 and 20 U.S.C. 1018a.

Subpart 3417.2—Options

3417.204 Contracts.

(e) Except as otherwise provided by law, contract periods that exceed the five-year limitation specified in FAR 17.204(e) must be approved by—

(1) The HCA for individual contracts; or

(2) The SPE for classes of contracts.

3417.207 Exercise of options.

If a contract provision allows an option to be exercised within a specified timeframe after funds become available, it must also specify that the date on which funds "become available" is the actual date funds become available to the contracting officer for obligation.

(f)(2) The Federal government may accept price reductions offered by contractors at any time during contract performance. Acceptance of price reductions offered by contractors will not be considered renegotiations as identified in this subpart if they were not initiated or requested by the Federal government.

Subpart 3417.5—Interagency Acquisitions Under the Economy Act

3417.502 General.

No other Federal department or agency may purchase property or services under contracts established or administered by FSA unless the purchase is approved by SPE for the requesting Agency.

Subpart 3417.7—Modular Contracting

3417.70 Modular contracting.

(a) FSA—FSA may incrementally conduct successive procurements of modules of overall systems. Each module must be useful in its own right or useful in combination with the earlier procurement modules. Successive modules may be procured on a sole source basis under the following circumstances:

(1) Competitive procedures are used for awarding the contract for the first system module; and

(2) The solicitation for the first module included the following:

(i) A general description of the entire system that was sufficient to provide potential offerors with reasonable notice of the general scope of future modules;

(ii) Other sufficient information to enable offerors to make informed business decisions to submit offers for the first module; and

(iii) A statement that procedures, i.e., the sole source awarding of follow-on modules, could be used for the subsequent awards.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 3419—SMALL BUSINESS PROGRAMS

Subpart 3419.2—Policies

Sec.
3419.201 General policy.
3419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).

Subpart 3419.5—Set-Asides for Small Business

3419.502 Setting aside acquisitions.
3419.502–4 Methods of conducting set-asides.

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Subpart 3419.2—Policies

3419.201 General policy.

3419.201–70 Office of Small and Disadvantaged Business Utilization.

The Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Deputy Secretary, is responsible for facilitating the implementation of the Small Business Act, as described in FAR 19.201. The OSDBU develops rules, policy, procedures, and guidelines for the effective administration of ED's small business program.

Subpart 3419.5—Set-Asides for Small Business

3419.502 Setting aside acquisitions.

3419.502–4 Methods of conducting set-asides.

(a) Simplified acquisition procedures as described in FAR Part 13 for the procurement of noncommercial services for FSA requirements may be used under the following circumstances:

(1) The procurement does not exceed $1,000,000;

(2) The procurement is conducted as a small business set-aside pursuant to section 15(a) of the Small Business Act;

(3) The price charged for supplies associated with the services are expected to be less than 20 percent of the total contract price;

(4) The procurement is competitive; and

(5) The procurement is not for construction.

PART 3422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 3422.10—Service Contract Act of 1965, as Amended

Sec.
3422.1002 Statutory requirements.
3422.1002–1 General.

Authority: 5 U.S.C. 301; 41 U.S.C. 418b (a) and (b).

Subpart 3422.10—Service Contract Act of 1965, as Amended

3422.1002 Statutory requirements.

3422.1002–1 General.

Consistent with 29 CFR 4.145, Extended term contracts, the five-year limitation set forth in the Service Contract Act of 1965, as amended (Service Contact Act), applies to each period of the contract individually, not the cumulative period of base and option periods. Accordingly, no contract subject to the Service Contract Act issued by the Department of Education will have a base period or option period that exceeds five years.

PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 3424.1—Protection of Individual Privacy

Sec.
3424.103 Procedures.
3424.170 Protection of human subjects.

Subpart 3424.2—Freedom of Information Act

3424.201 Authority.
3424.203 Policy.

Authority: 5 U.S.C. 301.

Subpart 3424.1—Protection of Individual Privacy

3424.103 Procedures.

(a) If the Privacy Act of 1974 (Privacy Act) applies to a contract, the contracting officer must specify in the contract the disposition to be made of the system or systems of records upon completion of performance. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to ED, or to keep the records but take certain measures to keep the records confidential and protect the individual's privacy.

(b) If a notice of the system of records has not been published in the **Federal Register**, the contracting officer may proceed with the acquisition but must not award the contract until the notice is published, unless the contracting officer determines, in writing, that portions of the contract may proceed without maintaining information subject

to the Privacy Act. In this case, the contracting officer may—

(1) Award the contract, authorizing performance only of those portions not subject to the Privacy Act; and

(2) After the notice is published and effective, authorize performance of the remainder of the contract.

3424.170 Protection of human subjects.

In this subsection, "Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. (34 CFR 97.102(d)) Research is considered to involve human subjects when a researcher obtains information about a living individual through intervention or interaction with the individual or obtains personally identifiable private information about an individual. Some categories of research are exempt under the regulations, and the exemptions are in 34 CFR part 97.

(a) Insert the provision in 3452.224–71 (Notice about research activities involving human subjects) in any solicitation where a resultant contract will include, or is likely to include, research activities involving human subjects covered under 34 CFR part 97.

(b) Insert the clause at 3452.224–72 (Research activities involving human subjects) in any solicitation that includes the provision in 3452.224–71 (Notice about research activities involving human subjects) and in any resultant contract.

Subpart 3424.2—Freedom of Information Act

3424.201 Authority.

The Department's regulations implementing the Freedom of Information Act, 5 U.S.C. 552, are in 34 CFR part 5.

3424.203 Policy.

(a) [Reserved]

(b) The Department's policy is to release all information incorporated into a contract and documents that result from the performance of a contract to the public under the Freedom of Information Act. The release or withholding of documents requested will be made on a case-by-case basis. Contracting officers must advise offerors and prospective contractors of the possibility that their submissions may be released under the Freedom of Information Act, not withstanding any restrictions that are included at the time of proposal submission. A clause substantially the same as the clause at 3452.224–70 (Release of information under the Freedom of Information Act) must be included in all solicitations and contracts.

PART 3425—FOREIGN ACQUISITION

Subpart 3425.1—Buy American Act-Supplies

Sec.
3425.102 Exceptions.

Authority: 5 U.S.C. 301.

Subpart 3425.1—Buy American Act—Supplies

3425.102 Exceptions.

The HCA approves determinations under FAR 25.103(b)(2)(i).

Subchapter E—General Contracting Requirements

PART 3427—PATENTS, DATA, AND COPYRIGHTS

Subpart 3427.4—Rights in Data and Copyrights

Sec.
3427.409 Solicitation provisions and contract clauses.

Authority: 5 U.S.C. 301.

Subpart 3427.4—Rights in Data and Copyrights

3427.409 Solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at 3452.227–70 (Publication and publicity) in all solicitations and contracts other than purchase orders.

(b) The contracting officer must insert the clause at 3452.227–71 (Advertising of awards) in all solicitations and contracts other than purchase orders.

(c) The contracting officer must insert the clause at 3452.227–72 (Use and non-disclosure agreement) in all contracts over the simplified acquisition threshold, and in contracts under the simplified acquisition threshold, as appropriate.

(d) The contracting officer must insert the clause at 3452.227–73 (Limitations on the use or disclosure of Government-furnished information marked with restrictive legends) in all contracts of third party vendors who require access to government-furnished information including other contractors' technical data, proprietary information, or software.

PART 3428—BONDS AND INSURANCE

Subpart 3428.3—Insurance

Sec.
3428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
3428.311–2 Contract clause.

Authority: 5 U.S.C. 301.

Subpart 3428.3—Insurance

3428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

3428.311–2 Contract clause.

The contracting officer must insert the clause at 3452.228–70 (Required insurance) in all solicitations and resultant cost-reimbursement contracts.

PART 3432—CONTRACT FINANCING

Subpart 3432.4—Advance Payments for Non-Commercial Items

Sec.
3432.402 General.
3432.407 Interest.

Subpart 3432.7—Contract Funding

3432.705 Contract clauses.
3432.705–2 Clauses for limitation of cost or funds.

Authority: 5 U.S.C. 301.

Subpart 3432.4—Advance Payments for Non-Commercial Items

3432.402 General.

The HCA is delegated the authority to make determinations under FAR 32.402(c)(1)(iii). This authority may not be redelegated.

3432.407 Interest.

The HCA is designated as the official who may authorize advance payments without interest under FAR 32.407(d).

Subpart 3432.7—Contract Funding

3432.705 Contract clauses.

3432.705–2 Clauses for limitation of cost or funds.

(a) The contracting officer must insert the clause at 3452.232–70 (Limitation of cost or funds) in all solicitations and contracts where a Limitation of cost or Limitation of funds clause is utilized.

(b) The contracting officer must insert the provision in 3452.232–71 (Incremental funding) in a solicitation if a cost-reimbursement contract using incremental funding is contemplated.

PART 3433—PROTESTS, DISPUTES, AND APPEALS

Subpart 3433.1—Protests

Sec.
3433.103 Protests to the agency.

Authority: 5 U.S.C. 301.

Subpart 3433.1—Protests

3433.103 Protests to the agency.

(f)(3) The contracting officer's HCA must approve the justification or determination to continue performance.

The criteria in FAR 33.103(f)(3) must be followed in making the determination to award a contract before resolution of a protest.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 3437—SERVICE CONTRACTING

Subpart 3437.1—Service Contracts—General

Sec.
3437.102 Policy.
3437.170 Observance of administrative closures

Subpart 3437.2—Advisory and Assistance Services

3437.270 Services of consultants clauses.

Subpart 3437.6—Performance-Based Acquisition

3437.670 Contract type.

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Subpart 3437.1—Service Contracts—General

3437.102 Policy.

If a service contract requires one or more end items of supply, FAR Subpart 37.1 and this subpart apply only to the required services.

3437.170 Observance of administrative closures.

The contracting officer must insert the clause at 3452.237–71 (Observance of administrative closures) in all solicitations and contracts for services.

Subpart 3437.2—Advisory and Assistance Services

3437.270 Services of consultants clause.

The contracting officer must insert the clause at 3452.237–70 (Services of consultants) in all solicitations and resultant cost-reimbursement contracts that do not provide services to FSA.

Subpart 3437.6—Performance-Based Acquisition

3437.670 Contract type.

Award-term contracting may be used for performance-based contracts and task orders that provide opportunities for significant improvements and benefits to the Department. Use of award-term contracting must be approved in advance by the HCA.

PART 3439—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 3439.70——Department Requirements for Acquisition of Information Technology

Sec.
3439.701 Internet Protocol version 6.
3439.702 Department security requirements.
3439.703 Federal desktop core configuration (FDCC) compatibility.

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

Subpart 3439.70—Department Requirements for Acquisition of Information Technology

3439.701 Internet Protocol version 6.

The contracting officer must insert the clause at 3452.239–70 (Internet Protocol version 6 (IPv6)) in all solicitations and resulting contracts for hardware and software.

3439.702 Department security requirements.

The contracting officer must include the solicitation provision in 3452.239–71 (Notice to offerors of Department security requirements) and the clause at 3452.239–72 (Department security requirements) when contractor employees will have access to Department-controlled facilities or space, or when the work (wherever located) involves the design, operation, repair, or maintenance of information systems and access to sensitive but unclassified information.

3439.703 Federal desktop core configuration (FDCC) compatibility.

The contracting officer must include the clause at 3452.239–73 (Federal desktop core configuration (FDCC) compatibility) in all solicitations and contracts where software will be developed, maintained, or operated on any system using the FDCC configuration.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 3442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 3442.70—Contract Monitoring

Sec.
3442.7001 Litigation and claims clause.
3442.7002 Delays clause.

Subpart 3442.71—Accessibility of meetings, conferences, and seminars to persons with disabilities

3442.7101 Policy and clause.

Authority: 5 U.S.C. 301.

Subpart 3442.70—Contract Monitoring

3442.7001 Litigation and claims clause.

The contracting officer must insert the clause at 3452.242–70 (Litigation and claims) in all solicitations and resultant cost-reimbursement contracts.

3442.7002 Delays.

The contracting officer must insert the clause at 3452.242–71 (Notice to the government of delays) in all solicitations and contracts other than purchase orders.

Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

3442.7101 Policy and clause.

(a) It is the policy of ED that all meetings, conferences, and seminars be accessible to persons with disabilities.

(b) The contracting officer must insert the clause at 3452.242–73 (Accessibility of meetings, conferences, and seminars to persons with disabilities) in all solicitations and contracts.

PART 3443—CONTRACT MODIFICATIONS

Subpart 3443.1—General

Sec.
3443.107 Contract clause

Authority: 5 U.S.C. 301.

Subpart 3443.1—General

3443.107 Contract clause.

The contracting officer must insert a clause substantially the same as 3452.243–70 (Key personnel) in all solicitations and resultant contracts in which it will be essential for the contracting officer to be notified that a change of designated key personnel is to take place by the contractor.

PART 3445—GOVERNMENT PROPERTY

Subpart 3445.4—Contractor Use and Rental of Government Property

Sec.
3445.405 Contracts with foreign governments or international organizations.

Authority: 5 U.S.C. 301.

Subpart 3445.4—Contractor Use and Rental of Government Property

3445.405 Contracts with foreign governments or international organizations.

Requests by, or for the benefit of, foreign governments or international organizations to use ED production and research property must be approved by the HCA. The HCA must determine the amount of cost to be recovered or rental charged, if any, based on the facts and circumstances of each case.

PART 3447—TRANSPORTATION

Subpart 3447.7—Foreign Travel

Sec.
3447.701 Foreign travel clause.

Authority: 5 U.S.C. 301.

Subpart 3447.7—Foreign Travel

3447.701 Foreign travel clause.

The contracting officer must insert the clause at 3452.247–70 (Foreign travel) in all solicitations and resultant cost-reimbursement contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 3452.2—Text of Provisions and Clauses

Sec.

Authority: 5 U.S.C. 301.

Subpart 3452.2—Text of Provisions and Clauses

3452.201–70 Contracting Officer's Representative (COR).

As prescribed in 3401.670–3, insert a clause substantially the same as:

CONTRACTING OFFICER'S REPRESENTATIVE (COR) (XXXX 2010)

(a) The Contracting Officer's Representative (COR) is responsihle for the technical aspects of the project, technical liaison with the contractor, and any other responsibilities that are specified in the contract. These responsibilities include inspecting all deliverables, including reports, and recommending acceptance or rejection to the contracting officer.

(b) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes that affect the contract price, terms, or conditions. Any contractor requests for changes shall be submitted in writing directly to the contracting officer or through the COR. No such changes shall be made without the written authorization of the contracting officer.

(c) The COR's name and contact information:

(d) The COR may he changed by the Government at any time, but notification of the change, including the name and address of the successor COR, will be provided to the contractor by the contracting officer in writing.

(End of Clause)

3452.202–1 Definitions—Department of Education.

As prescribed in 3402.201, insert the following clause in solicitations and contracts in which the clause at FAR 52.202–1 is required.

DEFINITIONS—DEPARTMENT OF EDUCATION (XXXX 2010)

(a) The definitions at FAR 2.101 are appended with those contained in Education Department Acquisition Regulations (EDAR) 3402.101.

(b) The EDAR is available via the Internet at *http://www.ed.gov/policy/fund/reg/clibrary/edar.html.*

(End of Clause)

3452.208–71 Printing.

As prescribed in 3408.870, insert the following clause in all solicitations and contracts other than purchase orders:

PRINTING (XXXX 2010)

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; except that performance involving the duplication of fewer than 5,000 units of any one page, or fewer than 25,000 units in the aggregate of multiple pages, shall not be deemed to be printing. A unit is defined as one side of one sheet, one color only (with black counting as a color), with a maximum image size of 10¾ by 14¼ inches on a maximum paper size of 11 by 17 inches. Examples of counting the number of units: black plus one additional color on one side of one page counts as two units. Three colors (including black) on two sides of one page count as six units.

(End of Clause)

3452.208–72 Paperwork Reduction Act.

As prescribed in 3408.871, insert the following clause in all relevant solicitations and contracts:

PAPERWORK REDUCTION ACT (XXXX 2010)

(a) The Paperwork Reduction Act of 1980 (Pub. L. 96–511) applies to contractors that collect information for use or disclosure by the Federal Government. If the contractor will collect information requiring answers to identical questions from 10 or more people, no plan, questionnaire, interview guide, or other similar device for collecting information may be used without first obtaining clearance from the Chief Acquisition Officer (CAO) or the CAO's designee within the Department of Education (ED) and the Office of Management and Budget (OMB). Contractors and Contracting Officers' Representatives shall be guided by the provisions of 5 CFR part 1320, Controlling Paperwork Burdens on the Public, and should seek the advice of the Department's Paperwork Clearance Officer to determine the procedures for acquiring CAO and OMB clearance.

(b) The contractor shall obtain the required clearances through the Contracting Officer's Representative before expending any funds or making public contacts for the collection of information described in paragraph (a) of this clause. The authority to expend funds and proceed with the collection shall be in writing by the contracting officer. The contractor must plan at least 120 days for CAO and OMB clearance. Excessive delay caused by the Government that arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of Clause)

3452.209–70 Conflict of interest certification.

As prescribed in 3409.507–1, insert the following provision in all solicitations anticipated to result in contract actions for services above the simplified acquisition threshold:

CONFLICT OF INTEREST CERTIFICATION (XXXX 2010)

(a)(1) The contractor, subcontractor, employee, or consultant, by signing the form in this clause, certifies that, to the best of their knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational or personal conflict of interest, (see FAR Subpart 9.5 for organizational conflicts of interest) (or apparent conflict of interest), for the organization or any of its staff, and that the contractor, subcontractor, employee, or consultant has disclosed all such relevant

information if such a conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts (or if such a person would question the impartiality of the contractor, subcontractor, employee, or consultant). Conflicts may arise in the following situations:

(i) *Unequal access to information.* A potential contractor, subcontractor, employee, or consultant has access to non-public information through its performance on a government contract.

(ii) *Biased ground rules.* A potential contractor, subcontractor, employee, or consultant has worked, in one government contract, or program, on the basic structure or ground rules of another government contract.

(iii) *Impaired objectivity.* A potential contractor, subcontractor, employee, or consultant, or member of their immediate family (spouse, parent, or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to the government, or in providing technical assistance or other services to recipients of Federal funds as part of its contractual responsibility. "Impaired objectivity" includes but is not limited to the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

(A) Financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be purchased by an educational agency, a person, organization, or institution in the course of implementing any program administered by the Department;

(B) Significant connections to teaching methodologies or approaches that might require or encourage the use of specific products, property, or services; or

(C) Significant identification with pedagogical or philosophical viewpoints that might require or encourage the use of a specific curriculum, specific products, property, or services.

(2) Offerors must provide the disclosure described above on any actual or potential conflict of interest (or apparent conflict of interest) regardless of their opinion that such a conflict or potential conflict (or apparent conflict of interest) would not impair their objectivity.

(3) In a case in which an actual or potential conflict (or apparent conflict of interest) is disclosed, the Department will take appropriate actions to eliminate or address the actual or potential conflict, including but not limited to mitigating or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest.

(b) The contractor, subcontractor, employee, or consultant agrees that if "impaired objectivity", or an actual or potential conflict of interest (or apparent conflict of interest) is discovered after the award is made, it will make a full disclosure in writing to the contracting officer. This disclosure shall include a description of actions that the contractor has taken or proposes to take to avoid, mitigate, or neutralize the actual or potential conflict (or apparent conflict of interest).

(c) *Remedies.* The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. If the contractor was aware of a potential conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the contracting officer, the Government may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract. These remedies include imprisonment for up to five years for violation of 18 U.S.C. 1001 and fines of up to $5000 for violation of 31 U.S.C. 3802. Further remedies include suspension or debarment from contracting with the Federal government. The contractor may also be required to reimburse the Department for costs the Department incurs arising from activities related to conflicts of interest. An example of such costs would be those incurred in processing Freedom of Information Act requests related to a conflict of interest.

(d) In cases where remedies short of termination have been applied, the contractor, subcontractor, employee, or consultant agrees to eliminate the organizational conflict of interest, or mitigate it to the satisfaction of the contracting officer.

(e) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, provisions that conform substantially to the language of this clause, including specific mention of potential remedies and this paragraph (e).

(f) *Conflict of Interest Certification.* The offeror, [insert name of offeror], hereby certifies that, to the best of their knowledge and belief, there are no present or currently planned interests (financial, contractual, organizational, or otherwise) relating to the work to be performed under the contract or task order resulting from Request for Proposal No. [insert number] that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) that would impinge on its ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest. The offeror further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to the Government's satisfaction, such conflict of interest (or apparent conflict of interest).

Offeror's Name _____

RFP/Contract No. _____

Signature _____

Title _____

Date _____

(End of Clause)

3452.209–71 Conflict of interest.

As prescribed in 3409.507–2, insert the following clause in all contracts for services above the simplified acquisition threshold:

CONFLICT OF INTEREST (XXXX 2010)

(a)(1) The contractor, subcontractor, employee, or consultant, has certified that, to the best of their knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational or personal conflict of interest, (see FAR Subpart 9.5 for organizational conflicts of interest), (or apparent conflict of interest) for the organization or any of its staff, and that the contractor, subcontractor, employee, or consultant has disclosed all such relevant information if such a conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts (or if such a person would question the impartiality of the contractor, subcontractor, employee, or consultant). Conflicts may arise in the following situations:

(i) *Unequal access to information*—A potential contractor, subcontractor, employee, or consultant has access to non-public information through its performance on a government contract.

(ii) *Biased ground rules*—A potential contractor, subcontractor, employee, or consultant has worked, in one government contract, or program, on the basic structure or ground rules of another government contract.

(iii) *Impaired objectivity*—A potential contractor, subcontractor, employee, or consultant, or member of their immediate family (spouse, parent, or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to the government, or in providing technical assistance or other services to recipients of Federal funds as part of its contractual responsibility. "Impaired objectivity" includes but is not limited to the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:

(A) Financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be purchased by an educational agency, a person, organization, or institution in the course of implementing any program administered by the Department;

(B) Significant connections to teaching methodologies that might require or encourage the use of specific products, property, or services; or

(C) Significant identification with pedagogical or philosophical viewpoints that might require or encourage the use of a specific curriculum, specific products, property, or services.

(2) Offerors must provide the disclosure described above on any actual or potential

conflict (or apparent conflict of interest) of interest regardless of their opinion that such a conflict or potential conflict (or apparent conflict of interest) would not impair their objectivity.

(3) In a case in which an actual or potential conflict (or apparent conflict of interest) is disclosed, the Department will take appropriate actions to eliminate or address the actual or potential conflict (or apparent conflict of interest), including but not limited to mitigating or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest.

(b) The contractor, subcontractor, employee, or consultant agrees that if "impaired objectivity", or an actual or potential conflict of interest (or apparent conflict of interest) is discovered after the award is made, it will make a full disclosure in writing to the contracting officer. This disclosure shall include a description of actions that the contractor has taken or proposes to take, after consultation with the contracting officer, to avoid, mitigate, or neutralize the actual or potential conflict (or apparent conflict of interest).

(c) *Remedies.* The Government may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. If the contractor was aware of a potential conflict of interest prior to award or discovered an actual or potential conflict (or apparent conflict of interest) after award and did not disclose or misrepresented relevant information to the contracting officer, the Government may terminate the contract for default, or pursue such other remedies as may be permitted by law or this contract. These remedies include imprisonment for up to five years for violation of 18 U.S.C. 1001 and fines of up to $5000 for violation of 31 U.S.C. 3802. Further remedies include suspension or debarment from contracting with the Federal government. The contractor may also be required to reimburse the Department for costs the Department incurs arising from activities related to conflicts of interest. An example of such costs would be those incurred in processing Freedom of Information Act requests related to a conflict of interest.

(d) In cases where remedies short of termination have been applied, the contractor, subcontractor, employee, or consultant agrees to eliminate the organizational conflict of interest, or mitigate it to the satisfaction of the Contracting Officer.

(e) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, provisions that conform substantially to the language of this clause, including specific mention of potential remedies and this paragraph (e).

(End of Clause)

3452.215–70 Release of restricted data.

As prescribed in 3415.209, insert the following provision in solicitations:

RELEASE OF RESTRICTED DATA (XXXXX 2010)

(a) Offerors are hereby put on notice that regardless of their use of the legend set forth in FAR 52.215–1(e), Restriction on Disclosure and Use of Data, the Government may be required to release certain data contained in the proposal in response to a request for the data under the Freedom of Information Act (FOIA). The Government's determination to withhold or disclose a record will be based upon the particular circumstance involving the data in question and whether the data may be exempted from disclosure under FOIA. In accordance with Executive Order 12600 and to the extent permitted by law, the Government will notify the offeror before it releases restricted data.

(b) By submitting a proposal or quotation in response to this solicitation:

(1) The offeror acknowledges that the Department may not be able to withhold nor deny access to data requested pursuant to FOIA and that the Government's FOIA officials shall make that determination;

(2) The offeror agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by FOIA;

(3) The offeror acknowledges that proposals not resulting in a contract remain subject to FOIA; and

(4) The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under FOIA.

(c) Offerors are cautioned that the Government reserves the right to reject any proposal submitted with:

(1) A restrictive legend or statement differing in substance from the one required by the solicitation provision in FAR 52.215–1(e), Restriction on Disclosure and Use of Data, or

(2) A statement taking exceptions to the terms of paragraphs (a) or (b) of this provision.

(End of Provision)

3452.216–70 Additional cost principles.

Insert the following clause in solicitations and contracts as prescribed in 3416.307(b):

ADDITIONAL COST PRINCIPLES (AUG 1987)

(a) *Bid and Proposal Costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and other agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs; bid and proposal costs of past accounting periods are unallowable as costs of the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs or pre-award costs.

(b) *Independent research and development costs.* Independent research and development is research and development that is not sponsored by Federal and non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocations of indirect costs of sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of Clause)

3452.216–71 Award-term.

As prescribed in 3416.470, insert a clause substantially the same as the following in all solicitations and contracts where an award-term arrangement is anticipated:

AWARD-TERM (XXXX 2010)

(a) The initial [insert initial contract term] contract term or ordering period may be extended or reduced on the basis of contractor performance, resulting in a contract term or an ordering period lasting at least [insert minimum contract term] years from the date of contract award, to a maximum of [insert maximum contract term] years after the date of contract award.

(b) The contractor's performance will be measured against stated standards by the performance monitors, who will report their findings to the Award Term Determining Official (or Board).

(c) Bilateral changes may be made to the award-term plan at any time. If agreement cannot be made within 60 days, the Government reserves the right to make unilateral changes prior to the start of an award-term period.

(d) The contractor will submit a brief written self-evaluation of its performance within X days after the end of the evaluation period. The self-evaluation report shall not exceed seven pages, and it may be considered in the Award Term Review Board's (ATRB's) (or Term Determining Official's) evaluation of the contractor's performance during this period.

(e) The contract term or ordering period may be unilaterally modified to reflect the ATRB's decision. If the contract term or ordering period has one year remaining, the operation of the contract award-term feature will cease and the contract term or ordering period will not extend beyond the maximum term stated in the contract.

(f) Award terms that have not begun may be cancelled (rather than terminated), should the need for the items or services no longer exists. No equitable adjustments to the contract price are applicable, as this is not the same procedure as a termination for convenience.

(g) The decisions made by the ATRB or Term Determining Official may be made

unilaterally. Alternate Dispute Resolution procedures shall be utilized when appropriate.

(End of Clause)

3452.224–70 Release of information under the Freedom of Information Act.

As prescribed in 3424.203, insert the following clause in solicitations and contracts.

RELEASE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT (XXXX 2010)

By entering into a contract with the Department of Education, the contractor, without regard to proprietary markings, approves the release of the entire contract and all related modifications and task orders including, but not limited to:

(1) Unit prices, including labor rates;

(2) Statements of Work/Performance Work Statements generated by the contractor;

(3) Performance requirements, including incentives, performance standards, quality levels, and service level agreements;

(4) Reports, deliverables, and work products delivered in performance of the contract (including quality of service, performance against requirements/standards/service level agreements);

(5) Any and all information, data, software, and related documentation first provided under the contract;

(6) Proposals or portions of proposals incorporated by reference; and

(7) Other terms and conditions.

(End of Clause)

3452.224–71 Notice about research activities involving human subjects.

As prescribed in 3424.170, insert the following provision in any solicitation where a resultant contract will include, or is likely to include, research activities involving human subjects covered under 34 CFR part 97:

NOTICE ABOUT RESEARCH ACTIVITIES INVOLVING HUMAN SUBJECTS (XXXX 2010)

(a) *Applicable Regulations.* In accordance with Department of Education regulations on the protection of human subjects, title 34, Code of Federal Regulations, part 97 ("the regulations"), the contractor, any subcontractors, and any other entities engaged in covered (nonexempt) research activities are required to establish and maintain procedures for the protection of human subjects.

(b) *Definitions.* (1) The regulations define *research* as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." (34 CFR 97.102(d)). If an activity follows a deliberate plan designed to develop or contribute to generalizable knowledge, it is research. Research includes activities that meet this definition, whether or not they are conducted under a program considered research for other purposes. For example, some demonstration and service programs may include research activities.

(2) The regulations define a *human subject* as a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual, or obtains identifiable private information. (34 CFR 97.102(f)). The definition of a human subject is met if an activity involves obtaining—

(i) Information about a living person by—

(A) Manipulating that person's environment, as might occur when a new instructional technique is tested; or

(B) Communicating or interacting with the individual, as occurs with surveys and interviews; or

(ii) Private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information). Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that an individual can reasonably expect will not be made public (for example, a school health record).

(c) *Exemptions.* The regulations provide exemptions from coverage for activities in which the only involvement of human subjects will be in one or more of the categories set forth in 34 CFR 97.101(b)(1)–(6). However, if the research subjects are children, the exemption at 34 CFR 97.101(b)(2) (i.e., research involving the use of educational tests, survey procedures, interview procedures or observation of public behavior) is modified by 34 CFR 97.401(b), as explained in paragraph (d) of this provision. Research studies that are conducted under a Federal statute that requires without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter, e.g., the Institute of Education Sciences confidentiality statute, 20 U.S.C. 9573, are exempt under 34 CFR 97.101(b)(3)(ii).

(d) *Children as research subjects.* Paragraph (a) of 34 CFR 97.402 of the regulations defines children as "persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted." Paragraph (b) of 34 CFR 97.401 of the regulations provides that, if the research involves children as subjects—

(1) The exemption at 34 CFR 97.101(b)(2) does not apply to activities involving—

(i) Survey or interview procedures involving children as subjects; or

(ii) Observations of public behavior of children in which the investigator or investigators will participate in the activities being observed.

(2) The exemption at 34 CFR 97.101(b)(2) continues to apply, unmodified by 34 CFR 97.401(b), to—

(i) Educational tests; and

(ii) Observations of public behavior in which the investigator or investigators will not participate in the activities being observed.

(e) *Proposal Instructions.* An offeror proposing to do research that involves human subjects must provide information to the Department on the proposed exempt and nonexempt research activities. The offeror should submit this information as an attachment to its technical proposal. No specific page limitation applies to this requirement, but the offeror should be brief and to the point.

(1) For exempt research activities involving human subjects, the offeror should identify the exemption(s) that applies and provide sufficient information to allow the Department to determine that the designated exemption(s) is appropriate. Normally, the narrative on the exemption(s) can be provided in one paragraph.

(2) For nonexempt research activities involving human subjects, the offeror must cover the following seven points in the information it provides to the Department:

(i) *Human subjects' involvement and characteristics:* Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, institutionalized individuals, or others who are likely to be vulnerable.

(ii) *Sources of materials:* Identify the sources of research material obtained from or about individually identifiable living human subjects in the form of specimens, records, or data.

(iii) *Recruitment and informed consent:* Describe plans for the recruitment of subjects and the consent procedures to be followed.

(iv) *Potential risks:* Describe potential risks (physical, psychological, social, financial, legal, or other) and assess their likelihood and seriousness. Where appropriate, discuss alternative treatments and procedures that might be advantageous to the subjects.

(v) *Protection against risk:* Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(vi) *Importance of knowledge to be gained:* Discuss why the risks to the subjects are reasonable in relation to the importance of the knowledge that may reasonably be expected to result.

(vii) *Collaborating sites:* If research involving human subjects will take place at collaborating site(s), name the sites and briefly describe their involvement or role in the research. Normally, the seven-point narrative can be provided in two pages or less.

(3) If a reasonable potential exists that a need to conduct research involving human subjects may be identified after award of the

contract and the offeror's proposal contains no definite plans for such research, the offeror should briefly describe the circumstances and nature of the potential research involving human subjects.

(f) *Assurances and Certifications.* (1) In accordance with the regulations and the terms of this provision, all contractors and subcontractors that will be engaged in covered human subjects research activities shall be required to comply with the requirements for Assurances and Institutional Review Board approvals, as set forth in the contract clause 3452.224–72 (Research activities involving human subjects).

(2) The contracting officer reserves the right to require that the offeror have or apply for the assurance and provide documentation of IRB approval of the research prior to award.

(g) (1) The regulations, and related information on the protection of human research subjects, can be found on the Department's protection of human subjects in research Web site: *http://www.ed.gov/about/offices/list/ocfo/humansub.html.*

(2) Offerors may also contact the following office to obtain information about the regulations for the protection of human subjects and related policies and guidelines:

U.S. Department of Education, Office of the Chief Financial Officer, Financial Management Operations, 400 Maryland Avenue, SW., Washington, DC 20202–4331, Telephone: (202) 260–3353.

(End of Provision)

3452.224–72 Research activities involving human subjects.

As prescribed in 3424.170, insert the following clause in any contract that includes research activities involving human subjects covered under 34 CFR part 97:

RESEARCH ACTIVITIES INVOLVING HUMAN SUBJECTS (XXXX 2010)

(a) In accordance with Department of Education regulations on the protection of human subjects in research, title 34, Code of Federal Regulations, part 97 ("the regulations"), the contractor, any subcontractors, and any other entities engaged in covered (nonexempt) research activities are required to establish and maintain procedures for the protection of human subjects. The definitions in 34 CFR 97.102 apply to this clause. As used in this clause, *covered research* means research involving human subjects that is not exempt under 34 CFR 97.101(b) and 97.401(b).

(b) If ED determines that proposed research activities involving human subjects are covered (i.e., not exempt under the regulations), the contracting officer or contacting officer's designee will require the contractor to apply for the Federal Wide Assurance from the Office for Human Research Protections, U.S. Department of Health and Human Services, if the contractor does not already have one on file. The contracting officer will also require that the contractor obtain and send to the Department documentation of Institutional Review Board (IRB) review and approval of the research.

(c) In accordance with 34 CFR part 97, all subcontractors and any legally separate entity (neither owned nor operated by the contractor) that will be engaged in covered research activities under or related to this contract shall be required to comply with the requirements for assurances and IRB approvals. The contractor must include the substance of this clause, including paragraph (c) of this clause, in all subcontracts, and must notify any other entities engaged in the covered research activities of their responsibility to comply with the regulations.

(d) Under no condition shall the contractor conduct, or allow to be conducted, any covered research activity involving human subjects prior to the Department's receipt of the certification that the research has been reviewed and approved by the IRB. (34 CFR 97.103(f)). No covered research involving human subjects shall be initiated under this contract until the contractor has provided the contracting officer (or the contracting officer's designee) a properly completed certification form certifying IRB review and approval of the research activity, and the contracting officer or designee has received the certification. This restriction applies to the activities of each participating entity.

(e) In accordance with 34 CFR 97.109(e), an IRB must conduct continuing reviews of covered research activities at intervals appropriate to the degree of risk, but not less than once a year. Covered research activities that are expected to last one year or more are therefore subject to review by an IRB at least once a year.

(1) For each covered activity under this contract that requires continuing review, the contractor shall submit an annual written representation to the contracting officer (or the contracting officer's designee) stating whether covered research activities have been reviewed and approved by an IRB within the previous 12 months. The contractor may use the form titled "Protection of Human Subjects: Assurance Identification/Certification/Declaration of Exemption" for this representation. For multi-institutional projects, the contractor shall provide this information on its behalf and on behalf of any other entity engaged in covered research activities for which continuing IRB reviews are required.

(2) If the IRB disapproves, suspends, terminates, or requires modification of any covered research activities under this contract, the contractor shall immediately notify the contracting officer in writing of the IRB's action.

(f) The contractor shall bear full responsibility for performing as safely as is feasible all activities under this contract involving the use of human subjects and for complying with all applicable regulations and requirements concerning human subjects. No one (neither the contractor, nor any subcontractor, agent, or employee of the contractor, nor any other person or organization, institution, or group of any kind whatsoever) involved in the performance of such activities shall be deemed to constitute an agent or employee of the Department of Education or of the Federal government with respect to such activities. The contractor agrees to discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the contractor and its employees.

(g) Upon discovery of any noncompliance with any of the requirements or standards stated in paragraphs (b) and (c) of this clause, the contractor shall immediately correct the deficiency. If at any time during performance of this contract, the contracting officer determines, in consultation with the Protection of Human Subjects Coordinator, Office of the Chief Financial Officer, or the sponsoring office, that the contractor is not in compliance with any of the requirements or standards stated in paragraphs (b) and (c) of this clause, the contracting officer may immediately suspend, in whole or in part, work and further payments under this contract until the contractor corrects such noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing.

(h) The Government may terminate this contract, in full or in part, for failure to fully comply with any regulation or requirement related to human subjects involved in research. Such termination may be in lieu of or in addition to suspension of work or payment. Nothing herein shall be construed to limit the Government's right to terminate the contract for failure to fully comply with such requirements.

(i) The regulations, and related information on the protection of human research subjects, can be found on the Department's protection of human subjects in research Web site: *http://ed.gov/about/offices/list/ocfo/humansub.html.* Contractors may also contact the following office to obtain information about the regulations for the protection of human subjects and related policies and guidelines:

U.S. Department of Education, Office of the Chief Financial Officer, Financial Management Operations, 400 Maryland Avenue, SW., Washington, DC 20202–4331, Telephone: (202) 260–3353.

(End of Clause)

3452.227–70 Publication and publicity.

As prescribed in 3427.409, insert the following clause in all solicitations and contracts other than purchase orders:

PUBLICATION AND PUBLICITY (XXXX 2010)

(a) Unless otherwise specified in this contract, the contractor is encouraged to publish and otherwise promote the results of its work under this contract. A copy of each article or work submitted by the contractor for publication shall be promptly sent to the contracting officer's representative. The contractor shall also inform the representative when the article or work is published and furnish a copy in the published form.

(b) The contractor shall acknowledge the support of the Department of Education in publicizing the work under this contract in

any medium. This acknowledgement shall read substantially as follows:

"This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number [Insert number]. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

(End of Clause)

3452.227–71 Advertising of awards.

As prescribed in 3427.409, insert the following clause in all solicitations and contracts other than purchase orders:

ADVERTISING OF AWARDS (XXXX 2010)

The contractor agrees not to refer to awards issued by, or products or services delivered to, the Department of Education in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed by the Federal government or is considered by the Federal government to be superior to other products or services.

(End of Clause)

3452.227–72 Use and non-disclosure agreement.

As prescribed in 3427.409, insert the following clause in all contracts over the simplified acquisition threshold, and in contracts under the simplified acquisition threshold as appropriate:

USE AND NON-DISCLOSURE AGREEMENT (XXXX 2010)

(a) Except as provided in paragraph (b) of this clause, proprietary data, technical data, or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties unless the intended recipient completes and signs the use and non-disclosure agreement in paragraph (c) of this clause prior to release or disclosure of the data.

(1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose proprietary data or technical data subject to limited rights, or computer software subject to restricted rights must be stipulated in an attachment to the use and non-disclosure agreement.

(2) For an intended release, disclosure, or authorized use of proprietary data, technical data, or computer software subject to special license rights, modify paragraph (c)(1)(iv) of this clause to enter the conditions, consistent with the license requirements, governing the recipient's obligations regarding use, modification, reproduction, release, performance, display, or disclosure of the data or software.

(b) The requirement for use and non-disclosure agreements does not apply to Government contractors that require access to a third party's data or software for the performance of a Government contract that contains the 3452.227–73 clause, Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.

(c) The prescribed use and non-disclosure agreement is:

Use and Non-Disclosure Agreement

The undersigned, *[Insert Name]*, an authorized representative of the *[Insert Company Name]*, (which is hereinafter referred to as the "recipient") requests the Government to provide the recipient with proprietary data, technical data, or computer software (hereinafter referred to as "data") in which the Government's use, modification, reproduction, release, performance, display, or disclosure rights are restricted. Those data are identified in an attachment to this agreement. In consideration for receiving such data, the recipient agrees to use the data strictly in accordance with this agreement.

(1) The recipient shall—

(i) Use, modify, reproduce, release, perform, display, or disclose data marked with Small Business Innovative Research (SBIR) data rights legends only for government purposes and shall not do so for any commercial purpose. The recipient shall not release, perform, display, or disclose these data, without the express written permission of the contractor whose name appears in the restrictive legend (the contractor), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these data to submit offers for, or perform, contracts with the recipient. The recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these data to such persons. Such an agreement must be consistent with the terms of this agreement.

(ii) Use, modify, reproduce, release, perform, display, or disclose proprietary data or technical data marked with limited rights legends only as specified in the attachment to this agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this agreement or expressly permitted in writing by the contractor.

(iii) Use computer software marked with restricted rights legends only in performance of contract number *[insert contract number(s)]*. The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share; or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend.

(iv) Use, modify, reproduce, release, perform, display, or disclose data marked with special license rights legends [To be completed by the contracting officer. See paragraph (a)(2) of this clause. Omit if none of the data requested is marked with special license rights legends].

(2) The recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these data from inadvertent release or disclosure to unauthorized third parties.

(3) The recipient agrees to accept these data "as is" without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding data specified in a contract for the performance of that contract.

(4) The recipient may enter into any agreement directly with the contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these data.

(5) The recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of data received from the Government with restrictive legends by the recipient or any person to whom the recipient has released or disclosed the data.

(6) The recipient is executing this agreement for the benefit of the contractor. The contractor is a third party beneficiary of this agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the recipient or any other person to whom the recipient has released or disclosed the data, to seek damages from any breach of this agreement, or to otherwise enforce this agreement.

(7) The recipient agrees to destroy these data, and all copies of the data in its possession, no later than 30 days after the date shown in paragraph (8) of this agreement, to have all persons to whom it released the data do so by that date, and to notify the contractor that the data have been destroyed.

(8) This agreement shall be effective for the period commencing with the recipient's execution of this agreement and ending upon *[Insert Date]*. The obligations imposed by this agreement shall survive the expiration or termination of the agreement.

[Insert business name.]

Recipient's Business Name
[Have representative sign.]

Authorized Representative
[Insert date.]

Date
[Insert name and title.]

Representative's Typed Name and Title

(End of Clause)

3452.227–73 Limitations on the use or disclosure of Government-furnished information marked with restrictive legends.

As prescribed in 3427.409, insert the following clause in all contracts of third party vendors who require access to Government-furnished information including other contractors' technical data, proprietary information, or

software: (COSTHA; PHMSA–2009–0126–0011);

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (XXXX 2010)

(a) For contracts under which data are to be produced, furnished, or acquired, the terms *limited rights* and *restricted rights* are defined in the rights in data—general clause (FAR 52.227–14).

(b) Proprietary data, technical data, or computer software provided to the contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *Proprietary data with legends that serve to restrict disclosure or use of data.* The contractor shall use, modify, reproduce, perform, or display proprietary data received from the Government with proprietary or restrictive legends only in the performance of this contract. The contractor shall not, without the express written permission of the party who owns the data, release, or disclose such data or software to any person.

(2) *GFI marked with limited or restricted rights legends.* The contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The contractor shall not, without the express written permission of the party whose name appears in the legend, release, or disclose such data or software to any person.

(3) *GFI marked with specially negotiated license rights legends.* The contractor shall use, modify, reproduce, release, perform, or display proprietary data, technical data, or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the use and non-disclosure agreement. The contractor shall modify paragraph (c)(1)(iii) of the use and non-disclosure agreement (3452.227–72) to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) Indemnification and creation of third party beneficiary rights.

(1) The contractor agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of proprietary data, technical data, or computer software received from the Government with restrictive legends by the contractor or any person to whom the contractor has released or disclosed such data or software.

(2) The contractor agrees that the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the contractor, or any person to whom the contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of proprietary data, technical data, or computer software subject to restrictive legends.

(End of Clause)

3452.228–70 Required insurance.

As prescribed in 3428.311–2, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

REQUIRED INSURANCE (XXXX 2010)

(a) The contractor shall procure and maintain such insurance as required by law or regulation, including but not limited to the requirements of FAR Subpart 28.3. Prior written approval of the contracting officer shall be required with respect to any insurance policy, the premiums for which the contractor proposes to treat as a direct cost under this contract, and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of, or damage to, Government property.

(End of Clause)

3452.232–70 Limitation of cost or funds.

The following clause shall be inserted in all contracts that include a limitation of cost or limitation of funds clause in accordance with 3432.705–2:

LIMITATION OF COST OR FUNDS (XXXX 2010)

(a) Under the circumstances in FAR 32.704(a)(1), the contractor shall submit the following information in writing to the contracting officer:

(1) Name and address of the contractor.

(2) Contract number and expiration date.

(3) Contract items and amounts that will exceed the estimated cost of the contract or the limit of the funds allotted.

(4) The elements of cost that changed from the original estimate (for example: labor, material, travel, overhead), furnished in the following order:

(i) Original estimate.

(ii) Costs incurred to date.

(iii) Estimated cost to completion.

(iv) Revised estimate.

(v) Amount of adjustment.

(5) The factors responsible for the increase.

(6) The latest date by which funds must be available to the contractor to avoid delays in performance, work stoppage, or other impairments.

(b) A fixed fee provided in a contract may not be changed if a cost overrun is funded. Changes in a fixed fee may be made only to reflect changes in the scope of work that justify an increase or decrease in the fee.

(End of Clause)

3452.232–71 Incremental funding.

As prescribed in 3432.705–2, insert the following provision in solicitations if a cost-reimbursement contract using incremental funding is contemplated:

INCREMENTAL FUNDING (XXXX 2010)

Sufficient funds are not presently available to cover the total cost of the complete project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause titled "Limitation of Funds" in FAR 52.232–22. Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover an estimated base performance period. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the entire period of performance. This intent notwithstanding, the Government will not be obligated to reimburse the contractor for costs incurred in excess of the periodic allotments, nor will the contractor be obligated to perform in excess of the amount allotted.

(End of Provision)

3452.237–70 Services of consultants.

As prescribed in 3437.270, insert the following clause in all solicitations and resultant cost-reimbursement contracts that do not provide services to FSA:

SERVICES OF CONSULTANTS (XXXX 2010)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of the contract entitled "Subcontracts" (FAR 52.244–2), the prior written approval of the contracting officer shall be required—

(a) If any employee of the contractor is to be paid as a "consultant" under this contract; and

(b) (1) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $800, exclusive of travel costs, or if the services of any consultant under this contract will exceed 10 days in any calendar year.

(2) If that contracting officer's approval is required, the contractor shall obtain and furnish to the contracting officer information concerning the need for the consultant services and the reasonableness of the fee to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by the consultant to others for performing consultant services of a similar nature.

(End of Clause)

3452.237–71 Observance of administrative closures.

As prescribed in 3437.170, insert the following clause in all solicitations and service contracts:

OBSERVANCE OF ADMINISTRATIVE CLOSURES (XXXX 2010)

(a) The contract schedule identifies all Federal holidays that are observed under this contract. Contractor performance is required under this contract at all other times, and compensated absences are not extended due to administrative closures of Government facilities and operations due to inclement weather, Presidential decree, or other administrative issuances where Government personnel receive early dismissal instructions.

(b) In cases of contract performance at a Government facility when the facility is closed, the vendor may arrange for performance to continue during the closure at the contractor's site, if appropriate.

(End of Clause)

3452.239–70 Internet protocol version 6 (IPv6)

As prescribed in 3439.701, insert the following clause:

INTERNET PROTOCOL VERSION 6 (XXXX 2010)

(a) Any system hardware, software, firmware, or networked component (voice, video, or data) developed, procured, or acquired in support or performance of this contract shall be capable of transmitting, receiving, processing, forwarding, and storing digital information across system boundaries utilizing system packets that are formatted in accordance with commercial standards of Internet protocol (IP) version 6 (IPv6) as set forth in Internet Engineering Task Force (IETF) Request for Comments (RFC) 2460 and associated IPv6-related IETF RFC standards. In addition, this system shall maintain interoperability with IPv4 systems and provide at least the same level of performance and reliability capabilities of IPv4 products.

(b) Specifically, any new IP product or system developed, acquired, or produced must—

(1) Interoperate with both IPv6 and IPv4 systems and products; and

(2) Have available contractor/vendor IPv6 technical support for development and implementation and fielded product management.

(c) Any exceptions to the use of IPv6 require the agency's CIO to give advance, written approval.

(End of Clause)

3452.239–71 Notice to offerors of Department security requirements.

As prescribed in 3439.702, include the following provision in solicitations when the offeror's employees would have access to Department-controlled facilities or space, or when the work (wherever located) would involve the design, operation, repair, or maintenance of information systems and access to sensitive but unclassified information:

NOTICE TO OFFERORS OF DEPARTMENT SECURITY REQUIREMENTS (XXXX 2010)

(a) The offeror and any of its future subcontractors will have to comply with Department security policy requirements as set forth in the "Bidder's Security Package: Security Requirements for Contractors Doing Business with the Department of Education" at: *http://www.ed.gov/fund/contract/about/bsp.html*.

(b) All contractor employees must undergo personnel security screening if they will be employed for 30 days or more, in accordance with Departmental Directive OM:5–101, "Contractor Employee Personnel Security Screenings," available at: *http://www.ed.gov/fund/contract/about/acs/acsom5101.doc*.

(c) The offeror shall indicate the following employee positions it anticipates to employ in performance of this contract and their proposed risk levels based on the guidance provided in Appendix I of Departmental Directive OM:5–101:

High Risk (HR): [Specify HR positions.].

Moderate Risk (MR): [Specify MR positions.].

Low Risk (LR): [Specify LR positions.].

(d) In the event the Department disagrees with a proposed risk level assignment, the issue shall be subject to negotiation. However, if no agreement is reached, the Department's risk level assignment shall be used. The type of screening and the timing of the screening will depend upon the nature of the contractor position, the type of data to be accessed, and the type of information technology (IT) system access required. Personnel security screenings will be commensurate with the risk and magnitude of harm the individual could cause.

(End of Provision)

3452.239–72 Department security requirements.

As prescribed in 3439.702, include the following clause in contracts when the contractor's employees will have access to Department-controlled facilities or space, or when the work (wherever located) would involve the design, operation, repair, or maintenance of information systems and access to sensitive but unclassified information:

DEPARTMENT SECURITY REQUIREMENTS (XXXX 2010)

(a) The contractor and its subcontractors shall comply with Department security policy requirements as set forth in the "Bidder's Security Package: Security Requirements for Contractors Doing Business with the Department of Education" at *http://www.ed.gov/fund/contract/about/bsp.html*.

(b) The following are the contractor employee positions required under this contract and their designated risk levels:

High Risk (HR): [Specify HR positions.]

Moderate Risk (MR): [Specify MR positions.]

Low Risk (LR): [Specify LR positions.]

(c) All contractor employees must undergo personnel security screening if they will be employed for 30 days or more, in accordance with Departmental Directive OM:5–101, "Contractor Employee Personnel Security Screenings." The type of screening and the timing of the screening will depend upon the nature of the contractor position, the type of data to be accessed, and the type of information technology (IT) system access required. Personnel security screenings will be commensurate with the risk and magnitude of harm the individual could cause.

(d) The contractor shall—

(1) Ensure that all non-U.S. citizen contractor employees are lawful permanent residents of the United States or have appropriate work authorization documents as required by the Department of Homeland Security, Bureau of Immigration and Appeals, to work in the United States.

(2) Ensure that no employees are assigned to high risk designated positions prior to a completed preliminary screening.

(3) Submit all required personnel security forms to the contracting officer's representative (COR) within 24 hours of an assignment to a Department contract and ensure that the forms are complete.

(4) Ensure that no contractor employee is placed in a higher risk position than that for which he or she was previously approved, without the approval of the Contracting Officer or his or her representative, the Department personnel security officer, and the computer security officer.

(5) Ensure that all contractor employees occupying high-risk designated positions submit forms for reinvestigation every five years for the duration of the contract or if there is a break in service to a Department contract of 365 days or more.

(6) Report to the COR all instances of individuals seeking to obtain unauthorized access to any departmental IT system, or sensitive but unclassified and/or Privacy Act protected information.

(7) Report to the COR any information that raises an issue as to whether a contractor employee's eligibility for continued employment or access to Department IT systems, or sensitive but unclassified and/or Privacy Act protected information, promotes the efficiency of the service or violates the public trust.

(8) Withdraw from consideration under the contract any employee receiving an unfavorable adjudication determination.

(9) Officially notify each contractor employee if he or she will no longer work on a Department contract.

(10) Abide by the requirements in Departmental Directive OM:5–101, "Contractor Employee Personnel Security Screenings."

(e) Further information including definitions of terms used in this clause and a list of required investigative forms for each risk designation are contained in Departmental Directive OM:5–101, "Contractor Employee Personnel Security

Screenings" available at the Web site listed in the first paragraph of this clause.

(f) Failure to comply with the contractor personnel security requirements may result in a termination of the contract for default.

(End of Clause)

3452.239–73 Federal desktop core configuration (FDCC) compatibility.

As prescribed in 3439.703, insert the following clause in all solicitations and contracts where software will be developed, maintained, or operated on any system using the FDCC configuration:

FEDERAL DESKTOP CORE CONFIGURATION (FDCC) COMPATIBILITY (XXXX 2010)

(a) (1) The provider of information technology shall certify applications are fully functional and operate correctly as intended on systems using the Federal desktop core configuration (FDCC). This includes Internet Explorer 7 configured to operate on Windows XP and Windows Vista (in Protected Mode on Vista).

(2) For the Windows XP settings, see: *http://csrc.nist.gov/itsec/guidance_WinXP.html,* and for the Windows Vista settings, see: *http://csrc.nist.gov/itsec/guidance_vista.html.*

(b) The standard installation, operation, maintenance, update, or patching of software shall not alter the configuration settings from the approved FDCC configuration. The information technology should also use the Windows Installer Service for installation to the default "program files" directory and should be able to silently install and uninstall.

(c) Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.

(End of Clause)

3452.242–70 Litigation and claims.

As prescribed in 3442.7001, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

LITIGATION AND CLAIMS (XXXX 2010)

(a) The contractor shall give the contracting officer immediate notice in writing of—

(1) Any legal action, filed against the contractor arising out of the performance of this contract, including any proceeding before any administrative agency or court of law, and also including, but not limited to, the performance of any subcontract hereunder; and

(2) Any claim against the contractor for cost that is allowable under the "allowable cost and payment" clause.

(b) Except as otherwise directed by the contracting officer, the contractor shall immediately furnish the contracting officer copies of all pertinent papers received under that action or claim.

(c) If required by the contracting officer, the contractor shall—

(1) Effect an assignment and subrogation in favor of the Government of all the contractor's rights and claims (except those against the Government) arising out of the action or claim against the contractor; and

(2) Authorize the Government to settle or defend the action or claim and to represent the contractor in, or to take charge of, the action.

(d) If the settlement or defense of an action or claim is undertaken by the Government, the contractor shall furnish all reasonable required assistance. However, if an action against the contractor is not covered by a policy of insurance, the contractor shall notify the contracting officer and proceed with the defense of the action in good faith.

(e) To the extent not in conflict with any applicable policy of insurance, the contractor may, with the contracting officer's approval, settle any such action or claim.

(f)(1) The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the contractor would have been compensated by insurance that was required by law, regulation, contract clause, or other written direction of the contracting officer, but that the contractor failed to secure through its own fault or negligence.

(2) In any event, unless otherwise expressly provided in this contract, the contractor shall not be reimbursed or indemnified by the Government for any cost or expense of liability that the contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may arise from the performance of this contract.

(End of Clause)

3452.242–71 Notice to the Government of delays.

As prescribed in 3442.7002, insert the following clause in all solicitations and contracts other than purchase orders:

NOTICE TO THE GOVERNMENT OF DELAYS (XXXX 2010)

The contractor shall notify the contracting officer of any actual or potential situation, including but not limited to labor disputes, that delays or threatens to delay the timely performance of work under this contract. The contractor shall immediately give written notice thereof, including all relevant information.

(End of Clause)

3452.242–73 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 3442.7101(b), insert the following clause in all solicitations and contracts:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (XXXX 2010)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of Clause)

3452.243–70 Key personnel.

As prescribed in 3443.107, insert a clause substantially the same as the following in all solicitations and resultant cost-reimbursement contracts:

KEY PERSONNEL (XXXX 2010)

(a) The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, or otherwise substituting any other personnel for specified personnel, the contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution shall be made by the contractor without written consent of the contracting officer; provided, that the contracting officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the contracting officer required by this clause. The contract shall be modified to reflect the addition or deletion of key personnel.

(b) The following personnel have been identified as Key Personnel in the performance of this contract:

Labor Category Name

[Insert category.]

Name

[Insert name.]

(End of Clause)

3452.247–70 Foreign travel.

As prescribed in 3447.701, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

FOREIGN TRAVEL (XXXX 2010)

Foreign travel shall not be undertaken without the prior written approval of the contracting officer. As used in this clause, *foreign travel* means travel outside the Continental United States, as defined in the

Federal Travel Regulation. Travel to non-foreign areas (including the States of Alaska and Hawaii, the Commonwealths of Puerto Rico, Guam and the Northern Mariana Islands and the territories and possessions of the United States) is considered "foreign travel" for the purposes of this clause.

(End of Clause)

[FR Doc. 2010–20198 Filed 8–20–10; 8:45 am]
BILLING CODE 4000–01–P

Federal Register

Monday,
August 23, 2010

Part III

Department of Housing and Urban Development

24 CFR Part 200
Prohibition of the Escrowing of Tax Credit Equity; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–5290–F–02]

RIN 2502–AI73

Prohibition of the Escrowing of Tax Credit Equity

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule conforms HUD's Federal Housing Administration multifamily mortgage insurance regulations to a provision in Title VIII of the Housing and Economic Recovery Act of 2008 that prohibits a requirement that tax credit sales proceeds be placed into escrow, at the time of initial endorsement, for assurance of project completion and to pay the initial service charge, carrying charges, and legal and organizational expenses incident to the construction of the project. This rule does not prohibit HUD from requiring escrows of funds for other purposes, such as for working capital. The rule also makes other changes to reduce burdens on the use of tax credits.

DATES: *Effective Date:* September 22, 2010.

FOR FURTHER INFORMATION CONTACT: Iris Agubuzo, Project Manager, Policy Division, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6158, Washington, DC 20410–8000, telephone number 202–402–2662 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On October 9, 2009, HUD published a proposed rule (74 FR 52354) implementing section 2834(c) of the Housing and Economic Development Act of 2008, Public Law 110–289 (approved July 30, 2008) (HERA), codified at 12 U.S.C. 1715s, which prohibits HUD from requiring the escrowing of tax credit proceeds to assure project completion. This statutory provision changes HUD's practice of requiring a substantial portion of the low-income housing tax credit equity under 26 U.S.C. 42 to be placed in escrow for potential future use over the life of the project at the time of initial endorsement. This requirement has had an inhibiting effect on the building of new low-income housing tax credit projects, and often required the use of bridge loans until the escrowed proceeds were released. A full discussion of section 2834(c) of HERA, the tax credit programs related to this rule, and the proposed rule can be found in the proposed rule at 74 FR 52354–52355.

II. Public Comments

The public comment period for this rule closed on December 8, 2009. HUD received one comment during the public comment period, from a trade association involved with the mortgage industry, which was supportive of the rule. This comment may be viewed at *http://www.regulations.gov*.

III. This Final Rule

This final rule conforms 24 CFR 200.54 to section 2834(c) of HERA, codified as 12 U.S.C. 1715s. This final rule prohibits HUD from requiring the escrowing of equity from the sales of tax credits. In addition, the rule extends the same treatment to historic and New Markets Tax Credits so that the escrow requirement is eliminated when equity is provided from these types of tax credits. Finally, proceeds from New Markets Tax Credits are added to 24 CFR 200.54(c) as a type of funding that need not be fully disbursed prior to the disbursement of the mortgage proceeds, where approved by the Federal Housing Commissioner.

IV. Findings and Certifications

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), this final rule was reviewed before publication, and the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that need to be complied with by small entities. This rule will allow mortgagors to retain more of their tax credit proceeds and, in many cases, relieve them of the need to take out a costly bridge loan to pay the costs for assurance of completion. Therefore, this rule, in conformance with statutory mandate, removes a costly regulatory requirement and does not impose any substantial economic impact on small entities. Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and that an initial regulatory flexibility analysis is not required.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

List of Subjects in 24 CFR Part 200

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program numbers for

the programs related to this rulemaking are 14.112, 14.123, 14.126, 14.134, 14.135, 14.138, 14.139, 14.151, and 14.155.

■ For the foregoing reasons, HUD amends 24 CFR part 200, as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 2. Revise § 200.54 to read as follows:

§ 200.54 Project completion funding.

(a) Except as provided in paragraph (d) of this section, the mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, carrying charges, and legal and organizational expenses incident to the construction of the project. The Commissioner may accept a lesser cash deposit or an alternative to a cash deposit in accordance with terms and conditions established by the Commissioner, where the required funding is to be provided by a grant or loan from a Federal, State, or local government agency or instrumentality.

(b) An agreement acceptable to the Commissioner shall require that funds provided by the mortgagor under requirements of this section must be disbursed in full for project work, material, and incidental charges and expenses before disbursement of any mortgage proceeds, except:

(c) Low-income housing tax credit syndication proceeds, historic tax-credit syndication proceeds, New Markets Tax Credits proceeds, or funds provided by a grant or loan from a Federal, State, or local governmental agency or instrumentality under requirements of this section need not be fully disbursed before the disbursement of mortgage proceeds, where approved by the Commissioner in accordance with terms, conditions, and standards established by the Commissioner;

(d) In the case of a mortgage insured under any provision of this title executed in connection with the purchase, construction, rehabilitation, or refinancing of a multifamily tax credit project, the Commissioner may not require:

(1) The escrowing of equity provided by Low-Income Housing Tax Credits for the project pursuant to Title 26, section 42 of the Internal Revenue Code of 1986;

(2) The escrowing of equity provided by historic rehabilitation tax credits, New Markets Tax Credits, or any other form of security, such as a letter of credit.

Dated: August 11, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–20630 Filed 8–20–10; 8:45 am]

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H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

H.R. 2097/P.L. 111–232
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H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the "John C. Godbold Federal Building". (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the "President Ronald W. Reagan Post Office Building". (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the "Paula Hawkins Post Office Building". (Aug. 16, 2010; 124 Stat. 2496)

H.R. 5552/P.L. 111–237
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