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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Doc. No. AMS–FV–09–0063; FV09–966–2 FIR]

Tomatoes Grown in Florida; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that decreased the assessment rate established for the Florida Tomato Committee (Committee), for the 2009–10 and subsequent fiscal periods from $0.0375 to $0.0275 per 25-pound carton of tomatoes handled. The Committee locally administers the marketing order, which regulates the handling of tomatoes grown in Florida. The interim final rule was necessary to align the Committee's expected revenue with decreases in its proposed budget for the 2009–10 and subsequent fiscal periods, which began on August 1. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* March 9, 2010.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (863) 324–3375, *Fax:* (863) 325–8793, or *E-mail: Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order and agreement regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*; or by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Under the order, Florida tomato handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable Florida tomatoes handled during the fiscal period and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on August 1, and ends on July 31.

In an interim final rule published in the **Federal Register** on November 4, 2009, and effective on November 5, 2009 (74 FR 57057; Doc. No. AMS–FV–09–0063, FV09–966–2 IFR), § 966.232 was amended by decreasing the assessment rate established for the Committee for the 2009–10 and subsequent fiscal periods from $0.0375 to $0.0275 per 25-pound carton or equivalent of Florida tomatoes. The decrease in the per-unit assessment rate was possible due to a significant decrease in education and promotion expenses for 2009–10.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 100 producers of tomatoes in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2008–09 season was approximately $8.13 per 25-pound carton, and total fresh shipments for the 2008–09 season were 47,054,853 25-pound cartons of tomatoes. Committee data indicates 10 percent of the handlers handle 56 percent of the total volume shipped outside the regulated area. Based on the average price and the other data available, a majority of handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below $750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2009–10 and subsequent fiscal periods from $0.0375 to $0.0275 per 25-pound carton of tomatoes. The Committee unanimously recommended 2009–10 expenditures of $1,910,500 and an assessment rate of $0.0275 per 25-pound container of tomatoes. The assessment rate of $0.0275 is $0.01 lower than the 2008–09 rate. The quantity of assessable tomatoes for the 2009–10 season is

estimated at 50 million. Thus, the $0.0275 rate should provide $1,375,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Market Access Program will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2009–10 fiscal period include $700,000 for education and promotion, $475,500 for salaries, $320,000 for research, and $70,000 for employee retirement. Budgeted expenses for these items in 2008–09 were $1,200,000, $505,500, $320,000, and $77,000, respectively.

The Committee recommended the decrease in assessment rate due to the reduction in expenditures for education and promotion.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Finance, Research, and Education and Promotion Subcommittees. Alternative expenditure levels were discussed by these groups, based upon the relative value of various projects to the tomato industry. The assessment rate of $0.0275 per 25-pound carton of assessable tomatoes was then determined by dividing the total recommended budget by the quantity of assessable tomatoes, estimated at 50 million 25-pound cartons for the 2009–10 season. Considering income from assessments, interest, and income from other sources, total income will be approximately $41,500 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2009–10 season could range between $3.89 and $19.01 per 25-pound carton of tomatoes. Therefore, the estimated assessment revenue for the 2009–10 season as a percentage of total grower revenue could range between .1 and .7 percent.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 20, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim final rule were required to be received on or before January 4, 2010. No comments were received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a503fc.*

This action also affirms information contained in the interim final rule concerning the Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 57057, November 4, 2009) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

PART 966—TOMATOES GROWN IN FLORIDA

■ Accordingly, the interim final rule amending 7 CFR part 966, which was published at 74 FR 57057 on November 4, 2009, is adopted as a final rule, without change.

Dated: March 2, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–4779 Filed 3–5–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2007–0008]

RIN 3150–AI01

Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events; Correcting Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its regulations to add a table that was inadvertently omitted in a correction document published on February 3, 2010 (75 FR 5495). The February 3, 2010 document corrected a final rule published on January 4, 2010 (75 FR 13), that amends the NRC's regulations to provide alternate fracture toughness requirements for protection against pressurized thermal shock (PTS) events for pressurized water reactor (PWR) pressure vessels.

DATES: The correction is effective March 8, 2010, and is applicable to February 3, 2010, the date the original rule became effective.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–492–3663, e-mail *Michael.Lesar@nrc.gov.*

SUPPLEMENTARY INFORMATION: This document adds Table 7 to the NRC's regulations at 10 CFR 50.61a(g) which was inadvertently omitted in a document published on February 3, 2010 (75 FR 5495). Therefore, the NRC finds that notice and opportunity for public comment on this corrective action is unnecessary.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 50.61a, paragraph (g) is amended by adding Table 7 directly after Table 6 to read as follows:

§ 50.61a Alternate fracture toughness requirements for protection against pressurized thermal shock events.

* * * * *

(g) * * *

TABLE 7—THRESHOLD VALUES FOR THE OUTLIER DEVIATION TEST (SIGNIFICANCE LEVEL = 1%)

Number of available data points (n)	Second largest allowable normalized residual value (r^*)	Largest allowable normalized residual value (r^*)
3	1.55	2.71
4	1.73	2.81
5	1.84	2.88
6	1.93	2.93
7	2.00	2.98
8	2.05	3.02
9	2.11	3.06
10	2.16	3.09
11	2.19	3.12
12	2.23	3.14
13	2.26	3.17
14	2.29	3.19
15	2.32	3.21

Dated at Rockville, Maryland, this 2nd day of March 2010.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2010–4846 Filed 3–5–10; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 617

RIN 3052–AC45

Borrower Rights; Effective Interest Rates; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a final rule under part 617 on December 22, 2009 (74 FR 67970) amending FCA's regulations to ensure that borrowers with loans directly tied to a widely publicized external index receive appropriate disclosure of interest rate changes in accordance with statutory requirements while allowing Farm Credit System institutions to provide the notices in a more efficient manner. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 2, 2010.

DATES: *Effective Date:* Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR part 617 published on December 22, 2009 (74 FR 67970) is effective March 2, 2010.

FOR FURTHER INFORMATION CONTACT: Jacqueline R. Melvin, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TTY (703) 883–4434, or Howard Rubin, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: March 3, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–4858 Filed 3–5–10; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 10–01]

RIN 1505–AC23

Extension of Import Restrictions Imposed on Certain Categories of Archaeological Material From the Pre-Hispanic Cultures of the Republic of El Salvador

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain categories of archaeological material from the Pre-Hispanic cultures of the Republic of El Salvador (El Salvador). The restrictions, which were originally imposed by Treasury Decision (T.D.) 95–20 and extended by CBP Decision (Dec.) 05–10 are due to expire on March 8, 2010. The Under Secretary of State for Public Diplomacy and Public Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, these import restrictions will remain in effect for an additional 5 years, and the CBP regulations are being amended to reflect this extension until March 8, 2015. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. T.D. 95–20 contains the Designated List of archaeological material representing Pre-Hispanic cultures of El Salvador, and describes the articles to which the restrictions apply.

DATES: *Effective Date:* March 8, 2010.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Charles Steuart, Chief, Intellectual Property Rights and Restricted Merchandise Branch, Regulations and Rulings, Office of International Trade, (202) 325–0093. For operational aspects, Michael Craig, Chief, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6558.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with the Government of the Republic of El Salvador (El Salvador) on March 8, 1995, concerning the imposition of import restrictions on certain categories of archaeological material from the Pre-Hispanic cultures of El Salvador. On March 10, 1995, the former United States Customs Service (now U.S. Customs and Border Protection (CBP)) published Treasury Decision (T.D.) 95–20 in the **Federal Register** (60 FR 13352), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions and included a list designating the types of articles covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists. 19 CFR 12.104g(a).

On March 9, 2000, the former United States Customs Service (now CBP) published T.D. 00–16 in the **Federal Register** (65 FR 12470), which amended 19 CFR 12.104g(a) to reflect the extension for an additional period of five years. Subsequently, on March 9, 2005, CBP published CBP Decision (Dec.) 05–10 in the **Federal Register** (70 FR 11539), which again amended 19 CFR 12.104g(a) to reflect an additional extension for another five year period.

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, and in response to a request by the Government of the Republic of El Salvador, on February 23, 2010, the Under Secretary of State for Public Diplomacy and Public Affairs, United States Department of State, concluding that the cultural heritage of El Salvador continues to be in jeopardy from pillage of Pre-Hispanic archaeological resources, made the necessary determinations to extend the import restrictions for an additional five years, on February 23, 2010, and diplomatic notes have been exchanged, reflecting the extension of those restrictions. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions.

The Designated List of Archaeological Material Representing PreHispanic Cultures of El Salvador covered by these import restrictions is set forth in T.D. 95–20. The Designated List and accompanying image database may also be accessed from the following Internet Web site address: *http://exchanges.state.gov/heritage/culprop/esimage.html*.

The restrictions on the importation of these archaeological materials from El Salvador are to continue in effect for an additional five years. Importation of such material continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to public interest because the action being taken is essential to avoid interruption of the application of existing import restrictions (5 U.S.C. 533(b)(B)). For the same reasons, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

■ For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, paragraph (a), the table is amended in the entry for El Salvador by removing the reference to "CBP Dec. 05–10" in the column headed "Decision

No." and adding in its place "CBP Dec. 10–01".

David V. Aguilar,

Acting Deputy Commissioner, U.S. Customs and Border Protection.

Approved: March 2, 2010.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2010–4783 Filed 3–5–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. FDA–2009–N–0436]

New Animal Drug Applications; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of March 8, 2010, for the final rule that appeared in the **Federal Register** of October 23, 2009 (74 FR 54749). The direct final rule amends the regulations regarding new animal drug applications (NADAs). Specifically, this direct final rule is being issued to provide that NADAs shall be submitted in the described form, as appropriate for the particular submission. Currently, the regulation requires that all NADAs contain the same informational sections and does not explicitly provide the appropriate flexibility needed to address the development of all types of new animal drug products. This amendment will allow the agency to appropriately review safety and effectiveness data submitted to support the approval of new animal drug products. This document confirms the effective date of the direct final rule.

DATES: Effective date confirmed: March 8, 2010.

FOR FURTHER INFORMATION CONTACT: Urvi Desai, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8297, e-mail: *urvi.desai@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 23, 2009 (74 FR 54749), FDA solicited comments concerning the direct final rule for a 75-day period ending January 6, 2010. FDA stated that the effective date of the direct final rule would be on March 8, 2010, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Authority: Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 514 is amended. Accordingly, the amendments issued thereby are effective.

Dated: March 3, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–4923 Filed 3–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Correction

AGENCY: Department of the Navy, DoD.

ACTION: Final rule; correcting amendment.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of February 12, 2010, concerning certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS). The document contained an incorrect hull number.

DATES: This correcting amendment is effective March 8, 2010, and is applicable beginning February 1, 2010.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ted Cook, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

Need for Correction

In the **Federal Register** (75 FR 6858) of February 12, 2010, in an amendment to § 706.2 Table Five, an incorrect hull number for the USS PHILIPPINE SEA was presented.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, the Navy amends part 706 of title 32 of the Code of Federal Regulations by making the following correcting amendment:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended in Table Five by revising the entry for USS PHILIPPINE SEA (CG 58) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, Section 2(f)	Forward masthead light not in forward quarter of ship. Annex I, Section 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, Section 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS PHILIPPINE SEA	CG59	.....	X	X	36.8
*	*	*	*	*	*

* * * * *

Approved: February 22, 2010.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Dated: February 24, 2010.

A.M. Vallandingam,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–4666 Filed 3–5–10; 8:45 am]

BILLING CODE 3810–FF–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

[FDMS Docket NARA–09–004]

RIN 3095–AB59

Researcher Identification Card

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is amending its regulations to require researchers using original records, NARA microfilm, and public use computers at the National Archives Building in Washington, DC, to obtain a researcher identification card. Under the new requirements, researchers at regional archives are also required to obtain a researcher identification card when there is no separate research room for the use of microfilm and public access computers.

DATES: This rule is effective April 7, 2010.

FOR FURTHER INFORMATION CONTACT: Marilyn Redman at telephone number 301–837–3174 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: On September 25, 2009, NARA published a proposed rule in the **Federal Register** (74 FR 48892) for a 60-day public comment period. The proposed rule required researchers using original records, NARA microfilm, and public use computers at the National Archives Building in Washington, DC, to obtain a researcher identification card. Researchers at regional archives are also required to obtain a researcher identification card when there is no separate research room for the use of microfilm and public access computers. The proposed rule also updated our regulations to reflect changes in available technology and research room practices, such as abolishing the three-hour time limit for using microfilm readers. Six comments were received. Of these, three basically supported the changes. One commenter wrote that the ID should include a requirement for an approved form of Federal identification before issuing the research card. Currently, States are converting their driver's licenses to a single federally-approved system. Our preferred form of identification is either a driver's license or a passport for our foreign researchers. We record these numbers as part of the registration process. In some cases, researchers do not have either type of identification and present a school ID or some other proof of address. In these situations, it is not feasible to require a federally-approved ID and we do not have the right to limit one's access to Federal records based on the absence of a Federally-approved ID. Of the other comments, one suggested that we accept the Library of Congress (LOC) researcher identification card. We rejected this comment because the Library of Congress and NARA are not connected administratively in any way. The Library of Congress is in the Legislative Branch and NARA is in the Executive Branch. Federal regulations apply to Executive Agencies only. Further, the NARA identification card is tied to a unique building security system shared by the National Archives Building in Washington, DC, and the National Archives at College Park. Another comment objected to having to carry another card and questioned how a card could make NARA more secure than using another common form of identification. Again, the application of the identification card is how we determine who is eligible to conduct research in our facility. The other forms of identification are required as proof of address to permit researcher access. The information must be standardized for both security purposes and for efficiently capturing administrative information on the characteristics of our users. Other forms of identification are not compatible with the computer system used for the registration process. This commenter also suggested that NARA record information from identification provided by the researcher upon each visit and that NARA also capture additional administrative information about each visit at that point. We rejected this comment because our current process is an OMB-approved information collection structured to minimize the paperwork burden on the public as required by the Paperwork Reduction Act. Another comment requested that any denials of access be appealable to the Archivist of the United States. Federal regulation 36 CFR 1254.50 already makes the Archivist of the United States the final determiner of research access when it has been denied at lower levels in the agency. Two commenters expressed doubt that the rule would improve security at the National Archives Building. The researcher identification cards are just one of several means employed by NARA that provide both physical and personal security. Because the cards are renewed annually, they provide the most reliable contact information available. Such information has proved useful in investigations conducted by the NARA Inspector General.

What changes are we making in this rule?

We are making substantive changes by amending the following sections:

- *§ 1254.6(b):* We are adding the requirement for researchers using the National Archives Building, even those only using microfilm publications or public use computers, to apply for and obtain a researcher identification card. This rule applies to regional archives facilities, as well, except where the microfilm research area is separate from the area where original records are used. We made other changes in the text to reflect that none of the affected facilities has more than one textual research room.
- *§ 1254.22(a):* The term "bar-coded" is deleted and replaced with the broader term "encoded." We no longer use bar-codes on researcher identification cards in the Washington, DC, area. The plastic cards we issue now have a magnetic strip and future cards may use other technology.
- *§ 1254.44(a):* Because fewer researchers are using microfilm and there are no waits, the 3-hour limit on use and waiting lists are no longer needed for the use of microfilm readers. We are removing references to the 3-hour limit.
- *§ 1254.84:* Since this section was last revised, the researcher identification card can be linked to a personal account established through the National Archives Trust Fund Cashier's Office and function as a debit card in Washington, DC, area research rooms. The regulation is being clarified to describe that capability. In addition, we are removing discussion of deposit accounts, which are no longer maintained by the Trust Fund.

We also are making non-substantive editorial changes in §§ 1254.6(c) and 1254.10(b).

Paperwork Reduction Act

The information collection in this regulation was previously approved by

the Office of Management and Budget (OMB) under OMB control number 3095–0016, which expires on September 30, 2011.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because the regulation affects individual researchers. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1254

Archives and records.

■ For the reasons set forth in the preamble, NARA amends part 1254, in title 36 of the Code of Federal Regulations, as follows:

PART 1254—USING RECORDS AND DONATED HISTORICAL MATERIALS

■ 1. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118.

■ 2. Amend § 1254.6 by revising paragraphs (b) and (c) to read as follows:

§ 1254.6 Do I need a researcher identification card to use archival materials at a NARA facility?

* * * * *

(b) You also need a researcher identification card if you wish to use only microfilm copies of documents at NARA's Washington, DC, area facilities and in any NARA facility where the microfilm research room is not separate from the textual research room.

(c) If you are using only microfilm copies of records in some regional archives where the microfilm research room is separate from the textual room, you do not need an identification card but you must register as described in § 1254.22.

■ 3. Amend § 1254.10 by revising paragraph (b) to read as follows:

§ 1254.10 For how long and where is my researcher identification card valid?

* * * * *

(b) At NARA facilities in the Washington, DC, area and other NARA facilities that issue and use plastic researcher identification cards as part of their security systems, we issue a plastic card to replace the paper card issued at some NARA facilities at no charge. The plastic card is valid at all NARA facilities.

■ 4. Amend § 1254.22 by revising paragraph (a) to read as follows:

§ 1254.22 Do I need to register when I visit a NARA facility for research?

(a) Yes, you must register each day you enter a NARA research facility by furnishing the information on the registration sheet or scanning an encoded researcher identification card. We may ask you for additional personal identification.

* * * * *

■ 5. Amend § 1254.44 by revising paragraph (a) to read as follows:

§ 1254.44 How long may I use a microfilm reader?

(a) Use of the microfilm readers in the National Archives Building is on a first-come-first served basis.

* * * * *

■ 8. Revise § 1254.84 to read as follows:

§ 1254.84 How may I use a debit card for copiers in the Washington, DC, area?

Your research identification card can be used as a debit card if you arrange with the Cashier's Office to set up an account using cash, check, money order, debit card, or credit card. Your researcher identification card number as encoded on the card forms the basis of your account in the debit system. You may also purchase generic debit cards of values up to $20 each from the Cashier's Office using any of the above payment methods. When the Cashier's Office is closed or at any other time during the hours research rooms are open as cited in part 1253 of this chapter, you may use cash or credit card to purchase a debit card from the vending machines located in the research rooms. Inserting the debit card into a card reader connected to the copier enables you to make copies for the appropriate fee, which are found in § 1258.12 of this chapter. You can add value to your card using the vending machine in the research room or at the Cashier's Office. We do not make refunds.

Dated: March 2, 2010.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2010–4838 Filed 3–5–10; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0609; FRL–9123–4]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; NSR Reform Regulations—Notice of Action Denying Petition for Reconsideration and Request for Administrative Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; action denying petition for reconsideration and request for administrative stay.

SUMMARY: EPA is providing notice that it has responded to a petition for reconsideration and a request for an administrative stay of certain provisions of the final rule titled, "Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; NSR Reform Regulations, Rule AM–06–04" published December 17, 2008. The final rule approved certain revisions to Wisconsin's Prevention of Significant Deterioration and Nonattainment New Source Review (NSR) construction permit programs, which Wisconsin submitted on May 25, 2006. The Wisconsin Department of Natural Resources sought approval of rule AM–06–04 to implement the NSR Reform provisions that were not vacated by the United States Court of Appeals for the District of Columbia (DC Circuit) in *New York* v. *EPA*. On February 17, 2009, EPA received a petition for reconsideration pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA) from the Natural Resources Defense Council (NRDC) and Sierra Club. The petition also requested that EPA stay implementation of certain provisions of the final rule pending its reconsideration. The EPA considered the petition for reconsideration and request for an administrative stay, along with information contained in the rulemaking docket, in reaching a decision on both the petition and request for a stay. The EPA Administrator, Lisa P. Jackson, denied both the petition for reconsideration and request for stay in letters to the petitioners dated January 19, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. David Painter, Air Quality Policy Division, (C 504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–5515; or *e-mail address: painter.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. How Can I Get Copies of This Document and Other Related Information?

This **Federal Register** notice, the petition for reconsideration, and the letter denying the petition for reconsideration and request for an administrative stay during the reconsideration are available in the docket that has been established for this action under Docket ID No. EPA–R05–OAR–2006–0609. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Publicly available docket materials are available in hard copy at: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you contact Danny Marcus, Environmental Engineer, at (312) 353–8781 before visiting the Region 5 office.

In addition to being available in the docket, an electronic copy of each of these documents will be available on the World Wide Web. Following signature by the Assistant Administrator, Office of Air and Radiation, a copy of this notice will be posted on EPA's NSR Web site, under Regulations & Standards, at *http://www.epa.gov/nsr.*

II. Judicial Review

Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before May 7, 2010.

Dated: February 26, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2010–4700 Filed 3–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0850; FRL–9123–7]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Chapter 116 Which Relate to the Application Review Schedule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final action to approve revisions to the applicable State Implementation Plan (SIP) for the State of Texas which relate to the Application Schedule regulations submitted to EPA on September 25, 2003 and January 24, 2008. The portions of the SIP revision approved today would revise and recodify existing SIP provisions addressing requirements related to the voiding of an application for a permit or permit amendment and implement the requirements of House Bill (HB) 3732, 80th Legislature (2007), and the Texas Health and Safety Code, section 382.0566, concerning specific deadlines for review and issuance of air permits for Advanced Clean Energy Projects (ACEP). EPA finds that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Act.

DATES: This direct final rule is effective on May 7, 2010 without further notice, unless EPA receives relevant adverse comment by April 7, 2010. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2006–0850 by one of the following methods:

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

(2) *E-mail:* Mr. Jeff Robinson at *robinson.jeffrey@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U.S. EPA Region 6 "Contact Us" Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

(4) *Fax:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), at fax number 214–665–6762.

(5) *Mail:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(6) *Hand or Courier Delivery:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2006–0850. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means that 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 along with any disk or CD–ROM submitted. 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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make

the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's direct final action, please contact Ms. Melanie Magee, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733; telephone (214) 665–7161; fax number (214) 665–6762; e-mail address *magee.melanie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever any reference to "we," "us," or "our" is used, we mean EPA.

Table of Contents

I. The State's Submittal

A. Which Rules Did the State Submit?

On September 25, 2003 and January 24, 2008, the Texas Commission on Environmental Quality (TCEQ) submitted proposed revisions to the Texas State Implementation Plan (SIP) concerning the Application Review Schedule, 30 TAC Chapter 116, Subchapter B, Division 1, Section 116.114. The TCEQ adopted these revisions on August 20, 2003 and December 19, 2007, to address requirements related to the voiding of a permit or permit amendment and Advanced Clean Energy Projects (ACEP), respectively. The September 25, 2003 SIP submittal affects sections 116.12, 116.114, 116.115, 116.120, 116.143, 116.150, 116.170, 116.172, 116.313, 116.315, and 116.715. With this action, EPA is taking a direct final action to approve the section 116.114 revisions. Sections 116.115, 116.120 and 116.315 are currently under review and EPA will act on these revisions separately. The remaining sections have been addressed by EPA in prior separate actions.[1,2] The January 24, 2008 SIP submittal affects section 116.114 and with this review, EPA is taking a direct final action to approve those changes. Tables 1 and 2 below summarize the changes that were submitted. A summary of EPA's evaluation of each section and the basis for this direct final rule is discussed in section II of this preamble. The Technical Support Document (TSD) includes a detailed evaluation of the referenced SIP submittals.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION

Title of SIP submittal	Date submitted to EPA	Date of state adoption	Regulations affected	Proposed action
Application Review Schedule	9/25/03	8/20/03	Revision to 30 TAC 116.114	Approval.
Advanced Clean Energy Project Permitting (HB 3732).	1/24/08	12/19/07	Revision to 30 TAC 116.114	Approval.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION

Section	Title	Date submitted	Date adopted by the state	Proposed action	Comments
Chapter 116—Control of Air Pollution by Permits for New Construction of Modification Subchapter B—New Source Review Permits					
Division 1—Permit Application					
30 TAC 116.114	Application Review Schedule.	9/25/03 1/24/08	8/20/03 12/19/07	Approval Approval	Revised paragraph (b)(2). Revised to address requirements related to Advanced Clean Energy Projects (ACEP). Redesignated existing paragraph (a)(3) to (a)(4) and added new paragraph (a)(3).

B. What Action Is EPA Taking?

We have evaluated the SIP submissions for consistency with the CAA, NSR regulations for major and minor sources in 40 CFR Part 51, and the approved Texas SIP. We have also reviewed the rules for enforceability and legal sufficiency. In this review, we have identified that on September 18, 2002, EPA approved revisions to Title 30 of the Texas Administrative Code (30 TAC), Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, Section 114—Application Review Schedule into the Texas SIP. Since EPA's approval, Texas has submitted three SIP revisions to section 116.114 on October 25, 1999, September 25, 2003 and January 24, 2008. The September 25, 2003 and January 24, 2008 rule revisions have

[1] On March 20, 2009 (74 FR 11851) EPA approved 30 TAC 116.12, 116.143, 116.150, 116.170, 116.172, and 116.313.

[2] On September 23, 2009 (74 FR 48480) EPA proposed to disapprove 30 TAC 116.715.

been determined to be severable from the October 25, 1999 revisions. The October 25, 1999 revision to section 116.114 contains references to the rules adopted by the State for 30 TAC Chapter 39, Public Notice. A Limited Approval and Limited Disapproval (LALD) was proposed on November 26, 2008 (73 FR 72001) for the section 116.114 revisions submitted to EPA on October 25, 1999. Therefore, this action will not include the section 116.114 revisions submitted on October 25, 1999, which will be addressed separately.

A technical analysis of the September 25, 2003 and January 24, 2008 proposed rule revisions have found that these revisions are consistent with the CAA, 40 CFR Part 51 and EPA policies. Therefore, EPA is taking a direct final action to approve the revised section 116.114 rules submitted on September 25, 2003 and January 24, 2008.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on May 7, 2010 without further notice unless we receive relevant adverse comment by April 7, 2010. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. EPA's Evaluation

A. What Did Texas Submit on September 25, 2003?

Texas submitted a revision to 30 TAC 116.114 requiring that an application for a permit or permit amendment be voided in the event deficient information supplied with the application is not corrected. If an applicant fails to make a good faith effort to provide the required information after two written notifications of the deficiency, the Executive Director shall void the application and notify the applicant. To further pursue the project following a voiding of the application, the applicant shall submit an entirely new application on a new form. The new application shall be subject to the state and federal rules and regulations in place at the time of submittal. If a new application is submitted within six months of the voidance of the original application, the application shall be exempt from the fee requirements under 30 TAC 116.140, Applicability. However, the applicant must go through a new technical review and republish the public notice.

The revised paragraph 116.114 (b)(2) adds language to state that the Executive Director shall notify a permit applicant of voidances and deficiencies in voided applications. The paragraph also states that the submitted application shall meet the requirements of 30 TAC 116.111, General Application. *See* section 116.114(b)(2).

B. What Is EPA's Evaluation of the September 25, 2003 SIP Revision?

This SIP revision changing the provisions contained in section 116.114 provides for the voiding of a deficient application for a permit or permit amendment. Texas revised this section as described below:

- Voiding of deficient application. Under the existing provisions in 30 TAC 116.114(b)(2), the applicant is notified of the voidance of the application. The revision contained in this SIP submittal specifies that the Executive Director will also notify the applicant of the remaining deficiencies in the voided application. Also included with this SIP revision is the requirement for meeting section 116.111, General Application.

Prior to the proposed final action for the 30 TAC 116.111 revisions, EPA approved 30 TAC 116.111, General Application, into the existing SIP on September 18, 2002 (67 FR 58697). The references contained in the 30 TAC 116.114 revisions were deemed to be consistent with the existing SIP approved provisions for 30 TAC 116.111.

The CAA and federal regulations do not specify a procedure for the voidance of a permit or permit application. However, the Federal Regulations do provide in 40 CFR 51.163 that the SIP must include administrative procedures to be applied in making determinations specified in 40 CFR 51.160. Therefore, a State should establish an administrative procedure for the voidance of permits or permit applications that do not meet the requirements of the Act and the applicable regulations. By adopting the voidance rule revisions, TCEQ has improved the SIP provision for the voidance of permit applications that do not meet the requirements contained in the SIP, including the state approved provisions of section 116.111, General Application.

C. What Did Texas Submit on January 24, 2008?

In this SIP submittal, TCEQ amended 30 TAC 116.114 in 30 TAC Chapter 116 to implement the requirements of House Bill 3732, 80th Legislature (2007), and Texas Health and Safety Code, section 382.0566, concerning specific deadlines for review and issuance of air quality permits for ACEPs. The amendment revises section 116.114 by adding a new paragraph (a)(3) and redesignating the existing paragraph (a)(3) to paragraph (a)(4).

The new paragraph (a)(3) establishes a review schedule for processing permits for ACEP. For any ACEP, the Executive Director of the TCEQ must complete the technical review of the permit application no later than nine months after declaring the permit application to be administratively complete. *See* section 116.114(a)(3)(A). Not later than nine months after declaring the permit application to be technically complete, the TCEQ shall issue an order to either issue or deny the permit. The TCEQ may extend this deadline up three months if it determines that the number of complex pending applications for permits under Chapter 116 will prevent the TCEQ from meeting the nine-month deadline without creating an extraordinary burden on the resources of the TCEQ. See section 116.114(a)(3)(B).

D. What Is EPA's Evaluation of the January 24, 2008 SIP Revision?

This SIP revision revises section 116.114 to establish a timeline for processing ACEP permits. Texas revised this section as described below:

- Determination of administrative completeness. Under the existing provisions in section 116.114(a)(1), the TCEQ must determine whether any permit application, including ACEP applications, are administratively complete within 90 days of receipt of the application. Paragraph (a)(1) continues to provide the procedures for notification for any permit application, whether it is administratively complete or whether it is deficient. Paragraph (a)(2) continues to provide the procedures for making a preliminary decision to approve or disapprove an application. These provisions were not changed in this SIP revision.
- Determination of technical completeness. The new section

116.114(a)(3)(A) provides that the Executive Director of the TCEQ shall complete the technical review of the permit application for an ACEP not later than nine months after declaring the permit application to be administratively complete.

• Issuance or denial of an ACEP permit. The new section 116.114(a)(3)(B) provides that the Executive Director of the TCEQ shall issue a final order either to issue or to deny a permit for an ACEP not later than nine months after declaring the permit application to be technically complete. This paragraph provides that this deadline may be extended up to three additional months whenever the Commission determines that the number of complex pending applications for permits under Chapter 116 will prevent the TCEQ from meeting the nine month deadline without creating an extraordinary burden on the resources of TCEQ. With regards to processing applications for new and modified sources, the Federal regulations provide in 40 CFR 51.163 that the plan must include the administrative procedures, which will be followed in making the determination specified in paragraph (a) of section 51.160. Accordingly, a State may establish a timeline for processing a permit that the State determines is necessary to process a permit application and make a final permit decision that meets the requirements of the Act and the applicable regulations. In adopting the timeline for processing ACEPs, Texas has set forth a schedule that will enable TCEQ to make declarations whether the ACEP application is administratively complete, technically complete, and to perform its evaluation of the permit application to determine whether it meets the requirements in the SIP, including the approved provisions of section 116.111, General Application, and to make its determination whether to issue or deny the permit. Thus this revised rule continues to ensure that new and modified sources will be authorized based upon the State's finding that the construction or modification of new and modified ACEP sources will not: (1) Violate applicable portions of the control strategy; or (2) interfere with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State; which satisfies the requirements of 40 CFR 51.160(a) and (b). These rules also satisfy the requirements under section 110(l) of the Act which provides that a plan revision must not interfere with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the act. The application review schedule provisions under review in this action will not interfere with attainment or reasonable further progress or any other applicable requirement of the Act.

III. Final Action

EPA is taking direct final action to approve revisions of the SIP Texas submitted on September 25, 2003 and January 24, 2008. We have determined that the revised rules clarify and strengthen the existing SIP.

EPA is not taking action on the revisions to sections 116.12, 116.114, 116.115, 116.120, 116.143, 116.150, 116.170, 116.172, 116.313, 116.315, and 116.715 included in the September 25, 2003 SIP submittal. Sections 116.115, 116.120 and 116.315 are currently under review and EPA will act on these revisions separately. The remaining sections have been addressed by EPA in prior separate actions.

IV. Statutory and Executive Order Reviews

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

• Is not a "Significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

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

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

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

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

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

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

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 7, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 24, 2010.

Al Armendariz,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended by revising the entry for Section 116.114 under Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, Subchapter B—New Source Review Permits, Division 1—Permit Application, to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116—Control of Air Pollution by Permits for New Construction or Modification				
*	*	*	*	*
Subchapter B—New Source Review Permits Division 1—Permit Application				
*	*	*	*	*
Section 116.114	Application Review Schedule.	12/19/07	03/08/10 [Insert *FR* page number where document begins].	Subsections (a), (a)(1), (a)(2), (b), and (b)(1) in the SIP are as adopted 6/17/98 and approved by EPA 9/18/02, 67 FR 58697. Subsection (b)(2) and subsections (a)(3) and (a)(4) are as adopted 8/20/03 and 12/19/07, respectively, and approved by EPA on 03/08/10 [Insert *FR* page number where document begins].
*	*	*	*	*

[FR Doc. 2010–4833 Filed 3–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0693; FRL–9108–4]

Approval and Promulgation of Implementation Plans: 1-Hour Ozone Extreme Area Plan for San Joaquin Valley, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving state implementation plan (SIP) revisions submitted by the State of California to meet the Clean Air Act (CAA) requirements applicable to the San Joaquin Valley, California extreme 1-hour ozone standard nonattainment area (SJV area). EPA is approving the SIP revisions for the SJV area as meeting applicable CAA and EPA regulatory requirements for the attainment and rate-of-progress demonstrations and their related contingency measures, reasonably available control measures, and other control requirements. In addition, EPA is approving the SJV Air Pollution Control District's Rule 9310, "School Bus Fleets."

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

ADDRESSES: EPA has established docket number EPA–R09–OAR–2008–0693 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, EPA Region IX, (415) 942–3957, *wicher.frances@epa.gov*.

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

Table of Contents

I. Summary of Proposed Actions

On July 14, 2009 at 74 FR 33933, EPA proposed to approve in part and disapprove in part the state implementation plan (SIP) revisions

submitted to EPA by the State of California. California made these submittals to meet the Clean Air Act (CAA) requirements applicable to the San Joaquin Valley, California ozone nonattainment area (SJV area). The SJV area became subject to these requirements following its 2004 reclassification to extreme for the 1-hour ozone national ambient air quality standard (1-hour ozone standard). 69 FR 20550 (April 15, 2004). Although we established a new 8-hour ozone standard in 1997 [1] and subsequently revoked the 1-hour ozone standard in 2005, the SJV area continues to remain subject to certain CAA requirements for the 1-hour standard through the anti-backsliding provisions in EPA's rule implementing the 8-hour ozone standard. *See* 40 CFR 51.905(a)(1)(i) and 900(f).

The SIP submittals that are the subject of our July 14, 2009 proposal are, first, the "Extreme Ozone Attainment Demonstration Plan" (2004 SIP) adopted by the San Joaquin Valley Air Pollution Control District (SJVAPCD or the District) in 2004 and amended in 2005. The 2004 SIP addresses CAA requirements for extreme 1-hour ozone areas including reasonably available control measures (RACM), rate-of-progress (ROP) and attainment demonstrations, and contingency measures.

The second SIP submittal is "Clarifications Regarding the 2004 Extreme Ozone Attainment Demonstration Plan" (2008 Clarifications) adopted by the SJVAPCD in 2008. The 2008 Clarifications provide updates to the 2004 SIP related to reasonably available control technology (RACT) measures adopted by the SJVAPCD, the ROP demonstrations, and contingency measures.

The third SIP submittal addressed in our proposal is the "2003 State and Federal Strategy for the California State Implementation Plan," (2003 State Strategy) adopted by the California Air Resources Board (ARB) in October, 2003. This strategy document, as modified by ARB's resolution adopting it, identifies ARB's regulatory agenda to reduce ozone and particulate matter in California, including specific commitments to reduce emissions in the SJV area. The 2004 SIP relies in part on the 2003 State Strategy for the reductions needed to demonstrate attainment and ROP for the 1-hour ozone standard in the SJV area.

[1] *See* 62 FR 38856 (July 18, 1997). In 2008 we lowered the 8-hour ozone standard to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). The references in this final rule to the 8-hour standard are to the 1997 standard as codified at 40 CFR 50.10.

We refer to these three submittals collectively as the 2004 SJV 1-hour ozone plan or 2004 1-hour ozone plan.

EPA proposed to approve 2004 SJV 1-hour ozone plan as meeting the applicable CAA and EPA requirements for an attainment demonstration,[2] ROP demonstrations, ROP contingency measures, RACM, clean fuel/clean technology for boilers, and the provision for transportation control measures sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips. We also proposed to approve a commitment by ARB to reduce volatile organic compounds (VOC) emissions in the SJV by 15 tons per day (tpd) and nitrogen oxides (NO_X) by 20 tpd and to approve SJVAPCD's Rule 9310, School Bus Fleets.

In the same action, we proposed to disapprove, as failing to meet the requirements of section 172(c)(9), the contingency measures in the 2004 SIP and the 2008 Clarifications that would take effect if the area failed to attain the 1-hour ozone standard by the applicable attainment date because the State had not demonstrated that its contingency measures provided sufficient emission reductions to meet EPA guidance.

On August 28, 2009, ARB provided additional information showing that existing, creditable measures provided a sufficient level of emission reduction needed for attainment contingency measures. Based on this additional information, on October 2, 2009, we proposed to approve the attainment contingency measures and withdraw our proposed disapproval at 74 FR 50936.

A more detailed discussion of each of the California's SIP submittals for the SJV area, the CAA and EPA requirements applicable to them, and our evaluation and proposed actions on them can be found in the July 14, 2009 and October 2, 2009 proposals.

II. Summary of Public Comments Received on the Proposals and EPA Responses

We received eight comment letters, listed below, in response to our July 14, 2009 proposal and October 2, 2009 supplemental proposal. Several of these letters were submitted in conjunction with separate EPA proposed actions on individual SJVAPCD rules. We respond to the comments in these letters in this final rule and TSD insofar as they are relevant to this action and respond to the remainder in our final rules for the individual rule actions.

[2] The proposed approval of the attainment demonstration was predicated in part on emission reductions from a number of State and District rules that we had proposed to approve in separate actions. We have now completed SIP approval of all these rules. *See* Table 1 at the end of this preamble.

We received four comment letters from the Center on Race, Poverty & the Environment representing various organizations. We refer to these comments collectively as from CRPE or the Center throughout this final rule and TSD:

1. Brent Newell, CRPE, August 31, 2009, on the behalf of 14 San Joaquin Valley environmental and community organizations and the Natural Resource Defense Council.

2. Johannes Epke, CRPE, August 31, 2009, on behalf of the Center and 12 San Joaquin Valley environmental and community organizations. This comment letter was in conjunction with our proposed limited approval/limited disapproval of SJVAPCD's Rule 4570, Confined Animal Facilities at 74 FR 33948 (July 14, 2009).

3. Johannes Epke, CRPE, August 31, 2009, on behalf of the Center and 11 San Joaquin Valley environmental and community organizations. This comment letter was in conjunction with our proposed approval of ARB's reformulated gasoline and diesel fuel regulations at 74 FR 38838 (July 27, 2009).

4. Brent Newell, Center on Race, Poverty & the Environment, November 2, 2009, on the behalf of 14 San Joaquin Valley environmental and community organizations and the Natural Resource Defense Council.

We received two comment letters from Earthjustice representing various organizations. We refer to these comments collectively as from Earthjustice throughout this final rule and TSD:

5. Paul Cort and Sarah Jackson, Earthjustice, August 31, 2009, on behalf of Medical Advocates for Healthy Air, Fresno Metro Ministries, and the Coalition for Clean Air (collectively, Earthjustice).

6. Paul Cort and Sarah Jackson, Earthjustice, November 2, 2009, on behalf of Fresno Metro Ministries.

7. Seyed Sadredin, SJVAPCD, August 27, 2009.

8. James N. Goldstene, Executive Officer, ARB, August 28, 2009.

We summarize our responses to the most significant comments in this final rule. Our full responses to all comments received can be found in the "Response to Comments" section of the Technical

Support Document (TSD) for this rulemaking.[3]

A. Emissions Inventory

Comment: Earthjustice comments on the importance of emission inventories, noting that CAA section 172(c)(3) requires that nonattainment plans "shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area." It also comments that ARB submitted to EPA new emissions inventories for ozone precursors in the San Joaquin Valley as part of the 2007 Ozone Plan[4] for the 8-hour ozone standard and that these updated inventories are "significantly different" than the inventories in the 2004 SIP as a result of being based on the State's revised on-road mobile source model, EMFAC. It then argues that the improvements to EMFAC, and therefore, to the SJV emissions inventory overall, make the 2007 Ozone Plan inventory the most comprehensive, accurate, current inventory of actual emissions from all sources affecting the Valley's air quality. It concludes that EPA cannot approve the 2004 SIP based on inventories that are no longer current or accurate.

Response: EPA does not dispute the importance of emission inventories. We evaluated the emission inventories in the 2004 SIP to determine if they are consistent with EPA guidance (General Preamble at 13502[5]) and adequate to support that plan's rate-of-progress (ROP) and attainment demonstrations. We determined that the plan's 2000 base year emission inventory was comprehensive, accurate, and current at the time it was submitted on November 15, 2004 and that this inventory, as well as the 2008 and 2010 projected inventories used in the ROP and attainment demonstrations, were prepared in a manner consistent with EPA guidance. Accordingly, we proposed to find that these inventories provide an appropriate basis for the ROP and attainment demonstrations in the 2004 SIP. See 74 FR at 33940.

ARB used its mobile source emissions model EMFAC2002 to generate the on-road mobile source inventory in the 2004 SJV 1-hour ozone plan. ARB released EMFAC2002 in October 2002 and EPA approved it for use in SIPs and conformity determinations on April 1, 2003 (62 FR 15720). At the time the 2004 SIP was being developed (2003–2004) and when it was subsequently adopted by SJVAPCD and submitted by ARB to EPA, EMFAC2002 was the most current mobile source model available for inventory purposes. 74 FR at 33940.

It has been EPA's consistent policy that States must use the most current mobile source model available at the time it is developing its SIP. *See* General Preamble at 13503 (requiring the use of MOBILE4.1[6] for November, 1992 submittal of base year inventories); Office of Mobile Sources, EPA, "Procedures for Emissions Inventory Preparation, Volume IV: Mobile Source," June, 1992, page 5 (allowing states to use MOBILE4.1 for the base year inventories due November 1992, but requiring MOBILE5, then scheduled for release in December 1992, for the ROP and attainment demonstrations due November 1993); *Memorandum,* Philip A. Lorang, Director, Assessment and Modeling Division, Office of Mobile Sources, "Release of MOBILE5a Emission Factor Model," March 29, 1993 (allowing the use of MOBILE5 in updated base year inventories but requiring the use of MOBILE5a, released March 1993, for the ROP and attainment demonstrations due November 1993); and *Memorandum,* John Seitz, Office of Air Quality Planning and Standards (OAQPS) and Margo Oge, Office of Transportation and Air Quality, "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity," January 18, 2002 (Seitz Memo).[7]

The Seitz Memo specifically addresses the issue of how the release of the new model, MOBILE6, would affect SIPs that were already submitted and/or approved or SIPs that were then under development. Citing CAA section 172(c)(3) and 40 CFR 51.112(a)(1), EPA stated in the Seitz Memo that, "while [i]n general, EPA believes that MOBILE6 should be used in SIP development as expeditiously as possible * * * [t]he Clean Air Act requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP is developed. As a result, the release of MOBILE6 in most areas would not require a SIP revision based on the new model." The Seitz Memo further states that:

> EPA believes that the Clean Air Act would not require states that have already submitted SIPs or will submit SIPs shortly after MOBILE6's release to revise these SIPs simply because a new motor vehicle emissions model is now available. EPA believes that this is supported by existing EPA policies and case law [*Delaney* v. *EPA,* 898 F.2d 687 (9th Cir. 1990)] * * *. EPA does not believe that the State's use of MOBILE5 should be an obstacle to EPA approval for reasonable further progress, attainment, or maintenance SIPs that have been or will soon be submitted based on MOBILE5, assuming that such SIPs are otherwise approvable and significant SIP work has already occurred (e.g., attainment modeling for an attainment SIP has already been completed with MOBILE5). It would be unreasonable to require the States to revise these SIPs with MOBILE6 since significant work has already occurred, and EPA intends to act on these SIPs in a timely manner.

EPA has also consistently applied this policy in approving SIPs. *See,* for example, 67 FR 30574, 30582 (May 7, 2002), approval of 1-hour ozone standard attainment demonstration for Atlanta, Georgia and 68 FR 19106, 19118 and 19120 (April 17, 2003), approval of the Washington, DC area's severe area 1-hour attainment demonstration. The latter action was upheld in *Sierra Club* v. *EPA,* 356 F.3d 296 (DC Cir. 2004). In *Sierra Club* at 308, the court cites the Seitz Memo and concludes that "[t]o require states to revise completed plans every time a new model is announced would lead to significant costs and potentially endless delays in the approval processes. EPA's decision to reject that course, and to accept the use of MOBILE5 in this case, was neither arbitrary nor capricious."

Comment: Earthjustice comments that an outdated inventory adversely affects the 2004 1-hour ozone plan's rate of progress (ROP) and attainment demonstrations and its demonstration related to offsetting growth in emissions from growth in vehicle miles traveled (as required by CAA section 182(d)(1)(A)) as well as results in the underestimation of the emission reductions needed to satisfy the contingency measure requirement. Earthjustice argues that EPA must reevaluate whether the 2004 SIP satisfies these CAA requirements based on the revised inventories.

Response: As discussed above, EPA's long-established and consistent policy does not require states to revise their already-submitted SIPs when a new mobile source emission model is released. This policy also means that

[3] "Final Technical Support Document for the Approval of the San Joaquin Valley Extreme 1-Hour Ozone Standard Plan and San Joaquin Portion of the 2003 State Strategy," December 11, 2009, U.S. EPA, Region 9. The TSD can be found in the docket for this rulemaking.

[4] SJVAPCD, "2007 Ozone Plan," April 30, 2007.

[5] The General Preamble is the "General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990." 57 FR 13498 (April 16, 1992).

[6] MOBILE is EPA's model for estimating pollution from highway vehicles in all states except California where EMFAC is used.

[7] In keeping with this policy, ARB and the District used the most current version of EMFAC, EMFAC2007, to prepare the most recent ozone plan for the Valley, the 2007 Ozone Plan. See 2007 Ozone Plan at p. B–1. EMFAC2007 was released in November 2006 and approved by EPA for use in SIPs in January 2008. 68 FR 3464, 3467 (January 18, 2008).

EPA will not evaluate these SIPs based on the new model. We note that EMFAC2007 was released in November 2006 and was not approved by EPA until January 2008 two years after the SIP was submitted. 68 FR 3464 (January 18, 2008).

In its comments, Earthjustice consistently attempts to conflate the 2004 1-hour ozone standard and 2007 8-hour ozone standard plans. Following Earthjustice's logic would effectively result in the 1-hour ozone plan being completely revised to become the 8-hour ozone plan. This is because an evaluation of the effect of emissions inventory changes on the plan could not be limited to just those changes resulting from the move to EMFAC2007. All factors, from revised growth projections and changes to other emissions inventory categories to the impact of new controls, would need to be taken into account before we could determine whether the plan is or is not approvable. In other words, an entire new plan would need to be developed. The District and State have already prepared a new plan that addresses the applicable 8-hour ozone standard and that is based on EMFAC2007 as well as other updated information. EPA will evaluate the revised inventories in connection with its action on that plan.

Comment: CRPE comments that because the 2004 SIP includes reductions from California mobile source rules that are subject to CAA section 209 waivers ("waiver measures") that occurred before 2000 as part of the 2000 base year inventory, EPA's proposed action on the inventory violates CAA sections 172(c)(3) and 182(a)(1) because EPA has failed to find that the reductions from the waiver measures have occurred, are enforceable, or are otherwise consistent with the Act, EPA's implementing regulations, and the General Preamble.

Response: We evaluated the emission inventories in the 2004 SIP to determine if they were consistent with EPA guidance (General Preamble at 13502) and adequate to support that plan's ROP and attainment demonstrations. 74 FR at 33940. Based on this evaluation, we proposed to find that the base year inventory (and the projected baseline inventories derived from it) provided an appropriate basis for the ROP and attainment demonstrations in the 2004 SIP. 74 FR 33933, 33940.

We also reviewed the District and State rules that were relied on for emissions reductions in the 2004 SIPs base year and baseline inventories. We determined that all these rules were creditable under the CAA and our policies. See Sections III and IV of the TSD. For the reasons given in the proposal at 33938–33939 and discussed in our responses to comments on waiver measures below, we believe that California's mobile source measures are fully creditable for SIP purposes.

As to emission reductions from waiver measures actually occurring, we assume that sources comply with applicable emission limitations and the agencies responsible for ensuring compliance with them are exercising appropriate oversight, absent information to the contrary. The commenter provides no information indicating either of these is not happening.

B. Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT)

Comment: Earthjustice asserts that deferring action on the RACT demonstration is illegal and arbitrary. It further asserts that EPA cannot find that the plan as submitted will provide for attainment "as expeditiously as practicable" without first demonstrating that all of the required controls, such as RACT, will be implemented. Finally, Earthjustice comments that EPA cannot treat RACM and RACT as discrete requirements that can be acted on separately because the statute clearly states that RACM includes RACT. It also comments that EPA cannot determine that all reasonable measures are in place in the Valley without first evaluating RACT for all SJV area sources.

Response: We described the RACM analysis in the 2004 1-hour ozone plan in the proposal at 74 FR at 33935. We also discussed the section 182(b)(2) RACT provision in the 2004 SIP, stating that the State had formally withdrawn it and that we had subsequently made a finding of failure to submit the RACT demonstration for the 1-hour ozone standard and initiated sanction and federal implementation plan (FIP) clocks under CAA sections 179(a) and 110(c). *See* 74 FR at 33935 and 74 FR 3442 (January 21, 2009). Finally, we noted that California had recently submitted the District's revised 8-hour ozone standard RACT plan (adopted April 16, 2009) (8-hour RACT SIP), that the plan is intended in part to correct the failure to submit finding for the 1-hour ozone standard RACT requirement as well, and that we are currently reviewing the revised RACT plan for action in a subsequent rulemaking. *See* 74 FR at 33935.

Contrary to the commenter's assertions, we did not defer action under CAA section 110(k) on the RACT demonstration in the 2004 SIP because, as a result of the State's withdrawal of this component of the plan, there was no such demonstration on which the Agency could act. Instead, we took the appropriate action under the CAA which was, as stated above, to make a finding of failure to submit a required plan element which started sanctions and FIP clocks. 74 FR 3442.

For 30 years, EPA has consistently interpreted the Act's RACM provision in section 172(c)(1) to require only those feasible measures necessary for expeditious attainment.[8] Under EPA's interpretation, if an otherwise feasible measure, alone or in combination with other measures, cannot expedite attainment then it is not considered to be reasonably available. Thus, to show that it had implemented RACM, a state needs to show that it considered a wide range of potential measures and found none that were feasible for the area and that would, alone or in combination with other feasible measures, advance attainment. See 1999 RACM Guidance. Based on the form of the 1-hour ozone standard and the Act's specific language on RACM, the appropriate standard for advancing attainment is, at a minimum, one year from the predicted attainment date in the attainment plan.[9]

We have determined that the 2004 SIP contains all reasonably available measures needed for expeditious attainment. While any evaluation of a RACM demonstration needs to consider the potential effect of CAA section 182(b)(2) RACT on expeditious attainment, it does not require that there first be an approved RACT demonstration. For this action, we

[8] We initially stated our interpretation of the RACM requirement in our 1979 nonattainment area plan guidance where we indicated that if a measure which might be available for implementation could not be implemented on a schedule that would advance the date for attainment in the area, we would not consider it reasonably available. *See* 44 FR 20372, 20375 (April 4, 1979). We affirmed this interpretation in the 1992 General Preamble at 13560; in *Memorandum*, John Seitz, Director, OAQPS, "Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," November 30, 1999 (1999 RACM Guidance); in the 2005 8-hour implementation rule (70 FR 71612, 71659 (November 29, 2005) and § 51.912(d)); and in the 2007 PM2.5 implementation rule (72 FR 20586, 20612 (April 25, 2007) and § 51.1010.

[9] Attainment of the 1-hour standard is based on the average of the most recent three calendar years of data: "The [1-hour ozone] standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million [ ] is equal to or less than 1." 40 CFR 50.9(a). Because of this, attainment of the 1-hour ozone standard can only be advanced by intervals of one full year. Section 172(c)(1) requires RACM sufficient to provide for expeditious attainment; thus, what constitutes RACM for the 1-hour ozone standard must be determined based on what reductions are needed to advance attainment by one year.

evaluated the potential effect of applying RACT to those sources in the SJV area for which we had not already approved a RACT rule. We provide this evaluation in Section V of the TSD. This evaluation shows that there were no outstanding RACT measures that, either individually or in combination with other potential measures, would advance attainment of the 1-hour ozone standard in the SJV area. *See* TSD Section V and 74 FR at 33938.

We agree that SJVAPCD must adopt and implement the specific section 182 control requirements of the Act, but we do not agree that the withdrawal of the RACT demonstration in the 2004 SIP precludes us from approving the plan's RACM and attainment demonstrations when it has been shown that the RACT measures would not contribute to more expeditious attainment.

Comment: Earthjustice argues that EPA's test of whether implementation of additional measures would advance attainment from 2010 to 2009 is arbitrary and "absurd" given that it believes the area will fail to attain by 2010. It further argues that it is "disingenuous for EPA to use this impossible test" to justify the missing RACT analysis and approve the plan as meeting the RACM requirement and EPA should instead require a new plan based on current, accurate information and a new attainment date and then evaluate whether RACM has been met.

Response: We have not used the "advance attainment test" to justify the missing RACT analysis. As stated previously, we took the appropriate statutory course of action for dealing with the withdrawn RACT demonstration: A finding of failure to submit and the starting of sanctions and FIP clocks. 74 FR 3442. We also described the process that we used to determine if the 2004 SJV 1-hour ozone plan provided for the implementation of all RACM needed for expeditious attainment in the proposal at 74 FR 33938. This process included evaluating the potential impact of RACT on source categories for which we have not previously approved a RACT rule. *See* TSD, Section V. We determined that there were no outstanding measures, including potential RACT measures, that could provide for more expeditious attainment of the 1-hour ozone standard in the SJV area.

As we discuss below in the Attainment Demonstration section, we disagree with the commenter that the plan does not demonstrate attainment of the revoked 1-hour ozone standard by the 2010 attainment date.

C. Treatment of Waiver Measures

Comment: Earthjustice and CRPE object to our proposal to grant emissions reduction credit to California's mobile source control measures that have received a waiver of preemption under CAA section 209 without first approving them into the SIP. Both commenters argue that our reliance for this proposal on the general savings clause in CAA section 193 is inappropriate for several reasons.

First, the commenters assert that CAA section 193 only saves those "formal rules, notices, or guidance documents" that are not inconsistent with the CAA. They argue that both the CAA and EPA's long-standing policies and regulations require SIPs to contain the state and local emission limitations and control measures that are necessary for attainment and RFP and to meet other CAA requirements. They assert that our position on the treatment of California's waived measures is inconsistent with this requirement. Earthjustice also argues that only SIP approval provides for the CAA's enforcement oversight (CAA sections 179 and 304) and anti-backsliding (CAA section 110(l) and 193) safeguards.

Second, the commenters argue that we cannot claim that our position was ratified by Congress because section 193 saves only regulations, standards, rules notices, orders and guidance "promulgated or issued" by the Administrator and we have not identified documents promulgated or issued by EPA that establish our position here. Earthjustice further asserts that our interpretation has not been expressed through any affirmative statements and the only statements of relevant statutory interpretations are contrary to our position on California's waived measures.

Third, Earthjustice argues that there is no automatic presumption that Congress is aware of an agency's interpretations and we have not provided any evidence that Congress was aware of our interpretation regarding the SIP treatment of California's mobile source control measures. Similarly, CRPE argues that our positions that Congress must expressly disapprove of EPA's long-standing interpretation and Congressional silence equates to a ratification of EPA's interpretation are incorrect.

Finally, Earthjustice argues EPA's position is inconsistent because we do require other state measures, e.g., the consumer products rules and fuel standards, to be submitted and approved into SIPs before their emission reductions can be credited.

Response: We continue to believe that credit for emissions reductions from implementation of California mobile source rules that are subject to CAA section 209 waivers ("waiver measures") is appropriate notwithstanding the fact that such rules are not approved as part of the California SIP. In our July 14, 2009 proposed rule, we explained why we believe such credit is appropriate. See pages 33938 and 33939 of the proposed rule. Historically, EPA has granted credit for the waiver measures because of special Congressional recognition, in establishing the waiver process in the first place, of the pioneering California motor vehicle control program and because amendments to the CAA (in 1977) expanded the flexibility granted to California in order "to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare," (H.R. Rep. No. 294, 95th Congr., 1st Sess. 301–2 (1977)). In allowing California to take credit for the waiver measures notwithstanding the fact that the underlying rules are not part of the California SIP, EPA treated the waiver measures similarly to the Federal motor vehicle control requirements, which EPA has always allowed States to credit in their SIPs without submitting the program as a SIP revision.

EPA's historical practice has been to give SIP credit for waiver measures by allowing California to include motor vehicle emissions estimates made by using California's EMFAC motor vehicle emissions factor model as part of the baseline emissions inventory. EMFAC was also used to prepare baseline inventory projections into the future, and thus the plans typically showed a decrease in motor vehicle emissions due to the gradual replacement of more polluting vehicles with vehicles manufactured to meet newer, more stringent California vehicle standards. The EMFAC model is based on the motor vehicle emissions standards for which California has received waivers from EPA but accounts for vehicle deterioration and many other factors. The motor vehicle emissions estimates themselves combine EMFAC results with vehicle activity estimates, among other considerations. *See* the 1982 Bay Area Air Quality Plan, and the related EPA rulemakings approving the plan (see 48 FR 5074 (February 3, 1983) for the proposed rule and 48 FR 57130 (December 28, 1983) for the final rule) as an example of how the waiver

measures have been treated historically by EPA in California SIP actions.[10]

In our proposed rule, we indicated that we believe that section 193 of the CAA, the general savings clause added by Congress in 1990, effectively ratified our long-standing practice of granting credit for the California waiver rules because Congress did not insert any language into the statute rendering EPA's treatment of California's motor vehicle standards inconsistent with the Act. Rather, Congress extended the California waiver provisions to most types of nonroad vehicles and engines, once again reflecting Congressional intent to provide California with the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare. Requiring the waiver measures to undergo SIP review in addition to the statutory waiver process is not consistent with providing California with the broadest possible discretion as to on-road and nonroad vehicle and engine standards, but rather, would add to the regulatory burden California faces in establishing and modifying such standards, and thus would not be consistent with Congressional intent. In short, we believe that Congress intended California's mobile source rules to undergo only one EPA review process (i.e., the waiver process), not two.

EPA's waiver review and approval process is analogous to the SIP approval process. First, CARB adopts its emissions standards following notice and comment procedures at the state level, and then submits the rules to EPA as part of its waiver request. When EPA receives new waiver requests from CARB, EPA publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. Once again, in substance, the process is similar to that for SIP approval and supports the argument that one hurdle (the waiver process) is all Congress intended for California standards, not two (waiver process plus SIP approval process). Moreover, just as SIP revisions are not effective until approved by EPA, changes to CARB's rules (for which a waiver has been granted) are not effective until EPA grants a new waiver, unless the changes are "within the scope" of a prior waiver and no new waiver is needed.

Moreover, to maintain a waiver, CARB's rules can be relaxed only to a level of aggregate equivalence to the Federal Motor Vehicle Control Program (FMVCP) [*see* section 209(b)(1)]. In this respect, the FMVCP acts as a partial backstop to California's on-road waiver measures (i.e., absent a waiver, the FMVCP would apply in California). Likewise, Federal nonroad vehicle and engine standards act as a backstop where there is a corresponding California nonroad waiver measure. The constraints of the waiver process thus serve to limit the extent to which CARB can relax the waiver measures for which there are corresponding EPA standards, and thereby serve an anti-backsliding function similar in substance to those established for SIP revisions in CAA sections 110(l) and 193. Meanwhile, the growing convergence between California and EPA mobile source standards diminishes the difference in the emissions reductions reasonably attributed to the two programs and strengthens the role of the Federal program in serving as an effective backstop to the State program. In other words, with the harmonization of EPA mobile source standards with the corresponding State standards, the Federal program is becoming essentially a full backstop to the California program.

In addition, the commenters' concerns over the potential for relaxation by the State of the waiver measures because the underlying regulations are not subject to EPA review and approval as a SIP revision are not a practical concern for this particular plan given that the plan's horizon is very short term (next couple of years), and the on-road and nonroad vehicles that in part will determine whether the area attains the standard are already in operation or in dealer showrooms. There is no practical means for the State to relax the standards of vehicles already manufactured, even if the State wanted to relax the standards.

As to the concerns raised by the commenters on enforceability, we note that CARB has as long a history of enforcement of vehicle/engine emissions standards as EPA, and CARB's enforcement program is equally as rigorous as the corresponding EPA program. The history and rigor of CARB's enforcement program lends assurance to California SIP revisions that rely on the emissions reductions from CARB's rules in the same manner as EPA's mobile source enforcement program lends assurance to other State's SIPs in their reliance on emissions reductions from the FMVCP.

In summary, we disagree that our interpretation of CAA section 193 is fundamentally flawed. EPA has historically given SIP credit for waiver measures in our approval of attainment demonstrations and other planning requirements such as reasonable further progress and contingency measures submitted by California. We continue to believe that section 193 ratifies our long-standing practice of allowing credit for California's waiver measures notwithstanding the fact they are not approved into the SIP, and correctly reflects Congressional intent to provide California with the broadest possible discretion in the development and promulgation of on-road and nonroad vehicle and engine standards.[11]

D. ARB Commitments

Comment: Earthjustice asserts that ARB's commitments to reduce emissions in the SJV area by 15 tpd VOC and 20 tpd NO_x by 2010 do not satisfy the first factor in EPA's three-factor test for the approval of enforceable commitments. The commenter argues that the commitments do not meet the first factor, that commitments provide only a limited portion of the needed reductions, for several reasons. The first reason is that the commitment is not for 6.3 percent of the needed NO_x reductions and 11.6 percent of the

[10] EPA's historical practice in allowing California credit for waiver measures notwithstanding the absence of the underlying rules in the SIP is further documented by reference to EPA's review and approval of a May 1979 revision to the California SIP entitled, "Chapter 4, California Air Quality Control Strategies." In our proposed approval of the 1979 revision (44 FR 60758, October 22, 1979), we describe the SIP revision as outlining California's overall control strategy, which the State had divided into "vehicular sources" and "non-vehicular (stationary source) controls." As to the former, the SIP revision discusses vehicular control measures as including "technical control measures" and "transportation control measures." The former refers to the types of measures we refer to herein as waiver measures, as well as fuel content limitations, and a vehicle inspection and maintenance program. The 1979 SIP revision included several appendices, including appendix 4–E, which refers to "ARB vehicle emission controls included in title 13, California Administrative Code, chapter 3 * * *," including the types of vehicle emission standards we refer to herein as waiver measures; however, California did not submit the related portions of the California Administrative Code (CAC) to EPA as part of the 1979 SIP revision submittal. With respect to the CAC, the 1979 SIP revision states: "The following appendices are portions of the California Administrative Code. Persons interested in these appendices should refer directly to the code." Thus, the State was clearly signaling its intention to rely on the California motor vehicle control program but not to submit the underlying rules to EPA as part of the SIP. In 1980, we finalized our approval as proposed. See 45 FR 63843 (September 28, 1980).

[11] In this regard, we disagree that we are treating the waiver measures inconsistently with other California control measures, such as consumer products and fuels rules, for the simple reason that, unlike the waiver measures, there is no history of past practice or legislative history supporting treatment of other California measures, such as consumer products rules and fuels rules, in any manner differently than is required as a general rule under CAA section 110(a)(2)(A), i.e., state and local measures that are relied upon for SIP purposes must be approved into the SIP.

needed VOC reductions, the numbers EPA gave in the proposal, but rather 19.2 percent for NO_X (41.1 tpd) and 37.7 percent for VOC (48.7 tpd) because these were the emissions reductions in commitment form at the time the 2004 SIP was submitted. The second reason is that the 11.6 percent commitment level for VOC is not minimal. The final reason is that the commitments now constitute 100 percent of the remaining emission reductions needed. The commenter concludes that these levels are not the limited or minimal role of commitments envisioned in the decision in *BCCA Appeal Group* v. *EPA*, 355 F.3d 817 (5th Cir. 2003).

Response: We did not propose to approve commitments of 41.1 tpd NO_X and 48.7 tpd VOC, rather we proposed to approve and are taking final action to approve commitments of 20 tpd NO_X and 15 tpd VOC. Because the District has adopted and submitted and EPA has approved rules achieving reductions of 21.1 tpd NO_X and 33.3 tpd VOC, the portion of the original commitments relating to those reductions are now obsolete and approving them would serve no purpose.

The State of Texas' enforceable commitment for the Houston/Galveston area, the approval of which was upheld by the 5th Circuit in *BCCA*, represented 6 percent of the reductions needed for attainment in the area. We note that the court in BCCA did not conclude that any amount greater than 6 percent of the reductions needed would be unreasonable. We believe that the 6.3 percent reduction of NO_X and the 11.6 percent reduction of VOC, as stated in our proposal, also fit within the parameters of a "limited" amount of the reductions needed for attainment and nothing in the *BCCA* decision contravenes that.

The commenter's final point merely describes the nature of all emissions reductions commitments submitted in support of an attainment demonstration, i.e., that they are intended to fill the gap between the level of reductions achieved from adopted rules and the level of reductions needed for attainment. In other words, their purpose is to provide 100 percent of the remaining reductions needed for attainment.

Comment: Earthjustice also argues that ARB's commitments to reduce emissions in the SJV area by 15 tpd VOC and 20 tpd NO_X by 2010 do not satisfy EPA's second factor for the approval of enforceable commitments, that the State is capable of meeting its commitment. It first notes that the Goldstene letter [12] shows that rules adopted through 2007 have achieved all of the remaining NO_X reductions needed for attainment and 3.3 tpd of the remaining 15 tpd of needed VOC reductions. The commenter then states, based on its review of the measures listed by EPA in its proposed approval as potential sources of VOC emission reductions (e.g., the pesticide emission limits adopted by the California Department of Pesticide Regulations) and ARB's 2009 rulemaking schedule, that there are no State measures that can be adopted and implemented in time to provide the remaining 11.7 tpd in VOC reductions by 2010.

Response: In the Goldstene letter, ARB submitted a summary of the emissions reductions expected from a number of adopted State rules in the SJV area by 2010. This summary is preliminary and is not intended to be a final statement of ARB's compliance with its emissions reductions commitments. As a preliminary analysis, it cannot be used to determine whether the State has not or will not meet its commitments.

The commenter assumes that the only path now open to the State to fulfill its commitments is the adoption of new measures. We disagree. The list of measures provided by ARB in the Goldstene letter represents a fraction of the rules and programs adopted and implemented by the State. See TSD, Table 9. ARB has not provided, nor has it been required to provide, an evaluation of the effectiveness of its entire control program in reducing emissions in the SJV area. Given that the State has preliminarily demonstrated, based on a limited set of measures, that all NO_X reductions and 90 percent of the VOC reductions needed for attainment of the revoked 1-hour standard in the SJV area have been achieved, we believe it is reasonable to assume that the balance of the reductions can also be achieved by the beginning of the 2010 ozone season.

Comment: Earthjustice argues that ARB's commitments to reduce emissions in the SJV area by 15 tpd VOC and 20 tpd NO_X by 2010 do not satisfy EPA's third and final factor for the approval of enforceable commitments, that the commitment is for a reasonable and appropriate period of time. It asserts that the State has less than a year to adopt and make effective controls to achieve 13.3 tpd VOC by 2010 and it is not reasonable to assume that it will able to achieve these reductions.

Response: ARB's commitments, made in 2004, are to reduce emissions in the SJV area by 20 tpd NO_X and 15 tpd VOC within 6 years, i.e., by 2010. It is not, as the commenter asserts, to reduce VOC emissions by 13.3 tpd between 2009 and 2010. The commenter's argument again rests on the assumption that the only path now open to the State to meet its VOC commitment is to adopt new measures. As we discuss above, we do not believe this assumption is accurate. See also 74 FR at 39940.

Comment: Earthjustice comments that EPA's recitation of its three-factor test to assess whether an enforceable commitment is approvable skips over the initial determination of whether the commitments are in fact enforceable. In this regard, Earthjustice cites *Bayview Hunters Point Community Advocates* v. *Metropolitan Transportation Commission*, 366 F.3d 692 (9th Cir. 2004) and *Citizens for a Better Environment* v. *Metropolitan Transportation Commission*, 746 F.Supp. 746, 701 (N.D. Cal. 1990), [known as CBE II], to support its contention that ARB's commitment is an unenforceable "aspirational goal." In addition, Earthjustice singles out *El Comite Para El Bienestar de Earlimart* v. *Warmerdam*, 539 F.3d 1062 (9th Cir. 2008), stating that in *El Comite* the court explained that because an inventory in a SIP is not a "standard or limitation" as defined by the CAA, it was not an independently enforceable aspect of the SIP. Thus, Earthjustice reasons, in order to be enforceable, not only must a state's commitment to adopt additional measures to attain emission standards be specific and announced in plain language, but any data or rubric that will be used to determine when and how the state will adopt those measures must be enforceable. Earthjustice further claims that EPA's approval here allows for the same unenforceable situation that occurred in Ventura where the State can claim, even erroneously, that changes to the inventory can substitute for its commitment to reduce emissions, and EPA and the public would be powerless to object.

Similarly, CRPE characterizes the 2003 State Strategy's commitments to achieve aggregate emission reductions by the attainment year as "global tonnage" commitments that could be interpreted as goals unenforceable by citizens under Ninth Circuit precedent, citing *Bayview*.

Response: Under CAA section 110(a)(2)(A), SIPs must include enforceable emission limitations and other control measures, means or

[12] Letter, James Goldstene, Executive Officer, ARB, to Laura Yoshii, Acting Regional Administrator, EPA, June 29, 2009 ("Goldstene letter").

techniques necessary to meet the requirements of the Act, as well as timetables for compliance. Similarly, section 172(c)(6) provides that nonattainment area SIPs must include enforceable emission limitations and such other control measures, means or techniques "as may be necessary or appropriate to provide for attainment" of the NAAQS by the applicable attainment date.

Control measures, including commitments in SIPs, are enforced through CAA section 304(a) which provides for citizen suits to be brought against any person who is alleged "to be in violation of * * * an emission standard or limitation* * *." "Emission standard or limitation" is defined in subsection (f) of section 304.[13] As observed in *Conservation Law Foundation, Inc.* v. *James Busey et al.*, 79 F.3d 1250, 1258 (1st Cir. 1996):

> Courts interpreting citizen suit jurisdiction have largely focused on whether the particular standard or requirement plaintiffs sought to enforce was sufficiently specific. Thus, interpreting citizen suit jurisdiction as limited to claims "for violations of specific provisions of the act or specific provisions of an applicable implementation plan," the Second Circuit held that suits can be brought to enforce specific measures, strategies, or commitments designed to ensure compliance with the NAAQS, but not to enforce the NAAQS directly. *See, e.g., Wilder*, 854 F.2d at 613–14. Courts have repeatedly applied this test as the linchpin of citizen suit jurisdiction. See, e.g., *Coalition Against Columbus Ctr.* v. *City of New York*, 967 F.2d 764, 769–71 (2d Cir. 1992); *Cate* v. *Transcontinental Gas Pipe Line Corp.*, 904 F. Supp. 526, 530–32 (W.D. Va. 1995); *Citizens for a Better Env't* v. *Deukmejian*, 731 F. Supp. 1448, 1454–59 (N.D. Cal.), modified, 746 F. Supp. 976 (1990).

Thus courts have found that the citizen suit provision cannot be used to enforce the aspirational goal of attaining the NAAQS, but can be used to enforce specific strategies to achieve that goal.

We describe ARB's commitments in the 2004 SIP and the 2003 State Strategy in detail in the proposal (74 FR at 33938). In short, the State commits to achieve 20 tpd NO_X and 15 tpd VOC in the SJV area by the 2010 ozone season. While the State identifies possible control measures that it might adopt to achieve these emission reductions, it does not commit to adopt any specific measures. The language used in the 2004 SIP and the 2003 State Strategy to describe ARB's commitments is consistently mandatory and unequivocal in nature, e.g.:

> ARB *commits to adopt and implement measures to achieve, at a minimum, 15 tpd ROG and 20 tpd NO_X emission reductions* in the San Joaquin Valley Air Basin by the 2010 ozone season. ARB *will adopt measures* to achieve these reductions between 2002–2009. ARB may meet this commitment by adopting one or more of the control measures in Table 4–3, by adopting one or more alternative control measures, or by implementing incentive program(s), *so long as the aggregate emission reduction commitment is achieved.*

(Emphasis added). 2004 SIP at section 4.7.3. *See* also ARB Staff Report at 29; ARB Resolution 04–29 at 5 ("The State's contribution includes * * * a previously approved commitment for 10 tpd new NO_X emissions as part of the Valley 2003 particulate matter SIP, and new commitments for additional reductions of 15 tpd VOC and 10 tpd NO_X from new defined State measures in the Valley in 2010"); and 2003 State Strategy at I–16, Table I–10 ("Total Emission Reduction Commitment from New State Measures" listed in the table as 10 tpd NO_X with action dates 2002–2008). Thus, ARB's commitments are clearly distinguishable from the aspirational goals, i.e., the SIP's overall objectives, identified by the *Bayview* court and cited by the commenter. ARB's commitments here are to adopt and implement measures that will achieve specific reductions of NO_X and VOC emissions. As such, as will be seen below, they are specific strategies designed to achieve the SIP's overall objectives.

Both Earthjustice and CRPE cite *Bayview* as support for their contention that ARB's commitments are unenforceable aspirational goals. *Bayview* does not, however, provide any such support. That case involved a provision of the 1982 Bay Area 1-hour ozone SIP, known as TCM 2, which states in pertinent part:

> Support post-1983 improvements identified in transit operator's 5-year plans, after consultation with the operators adopt ridership increase target for 1983–1987. EMISSION REDUCTION ESTIMATES: These emission reduction estimates are predicated on a 15% ridership increase. The actual target would be determined after consultation with the transit operators.

Following a table listing these estimates, TCM 2 provided that "[r]idership increases would come from productivity improvements * * *."

Ultimately the 15 percent ridership estimate was adopted by the Metropolitan Transportation Commission (MTC), the implementing agency, as the actual target. Plaintiffs subsequently attempted to enforce the 15 percent ridership increase. The court found that the 15 percent ridership increase was an unenforceable estimate or goal. In reaching that conclusion, the court considered multiple factors, including the plain language of TCM 2 (e.g., "[a]greeing to establish a ridership 'target' is simply not the same as promising to attain that target," *Bayview* at 698); the logic of TCM 2, i.e., the drafters of TCM 2 were careful not to characterize any given increase as an obligation because the TCM was contingent on a number of factors beyond MTC's control, *id.* at 699; and the fact that TCM 2 was an extension of TCM 1 that had as an enforceable strategy the improvement of transit services, specifically through productivity improvements in transit operators' five-year plans, *id.* at 701. As a result of all of these factors, the Ninth Circuit found that TCM 2 clearly designated the productivity improvements as the only enforceable strategy. *id.* at 703.

The commitments in the 2004 SIP and 2003 State Strategy are in stark contrast to the ridership target that was deemed unenforceable in *Bayview*. The language in ARB's commitments, as stated multiple times in multiple documents, is specific and unequivocal; the intent of the commitments is clear; and the strategy of adopting measures to achieve the required reductions is completely within ARB's control. Furthermore, as stated previously, ARB identifies specific emission reductions that it will achieve and specifies that this will be done through the adoption and implementation of measures and also specifies the time by which these reductions will be achieved, i.e., the beginning of the 2010 ozone season.

Earthjustice also cites *CBE II* at 701 for the proposition that courts can only enforce "express" or "specific" strategies. However, as discussed below, there is nothing in the CBE cases that supports the commenter's view that ARB commitments are neither express nor specific. In fact, these cases support our interpretation of ARB's commitments.

Citizens for a Better Environment v. *Deukmejian*, 731 F.Supp.1448 (N.D. Cal. 1990), known as CBE I, concerned in part contingency measures for the transportation sector in the 1982 Bay Area 1-hour ozone SIP. The provision states: "If a determination is made that RFP is not being met for the transportation sector, MTC will adopt additional TCMs within 6 months of the determination. These TCMs will be designed to bring the region back within the RFP line." The court found that "[o]n its face, this language is both specific and mandatory." *Id.* at 1458. In *CBE I*, ARB and MTC argued that TCM 2 could not constitute an enforceable strategy because the provision fails to specify exactly what TCMs must be adopted.

[13] EPA can also enforce SIP commitments pursuant to CAA section 113.

The court rejected this argument, finding that "[w]e discern no principled basis, consistent with the Clean Air Act, for disregarding this unequivocal commitment simply because the particulars of the contingency measures are not provided. Thus we hold that that the basic commitment to adopt and implement additional measures, should the identified conditions occur, constitutes a specific strategy, fully enforceable in a citizens action, although the exact contours of those measures are not spelled out." *Id.* at 1457.[14] In concluding that the transportation and stationary source contingency provisions were enforceable, the court stated: "Thus, while this Court is not empowered to enforce the Plan's overall objectives [footnote omitted; attainment of the NAAQS]—or NAAQS—directly, it can and indeed, must, enforce specific strategies committed to in the Plan." *Id.* at 1454.

Earthjustice's reliance on *CBE II* is misplaced. It also involves in part the contingency measures in the 1982 Bay Area Plan. In *CBE II*, defendants argued that RFP and the NAAQS are coincident because, had the plan's projections been accurate, then achieving RFP would have resulted in attainment of the NAAQS. The court rejected this argument, stating that:

> the Court would be enforcing the *contingency plan*, an express strategy for attaining NAAQS. Although enforcement of this strategy might possibly result in attainment, it is distinct from simply ordering that NAAQS be achieved without anchoring that order on any specified strategy. Plainly, the fact that a specified strategy might be successful and lead to attainment does not render that strategy unenforceable.

(Emphasis in original). *CBE II* at 980.

ARB's commitments here are analogous to the terms of the contingency measures in the *CBE* cases. ARB commits to adopt measures, which are not specifically identified, to achieve a specific tonnage of emission reductions. Thus, the commitment to a specific tonnage reduction is comparable to a commitment to achieve RFP. Similarly, a commitment to achieve a specific amount of emission reductions through adoption and implementation of unidentified measures is comparable to the commitments to adopt unspecified TCMs and stationary source measures. The key is that commitment must be clear in terms of what is required, e.g., a specified amount of emission reductions or the achievement of a specified amount of progress (i.e., RFP). ARB's commitments are thus clearly a specific enforceable strategy rather than an unenforceable aspirational goal.

Earthjustice's reliance on *El Comite* is also misplaced. The plaintiffs in the district court attempted to enforce a provision of the 1994 California 1-hour ozone SIP known as the Pesticide Element. The Pesticide Element relied on an inventory of pesticide VOC emissions to provide the basis to determine whether additional regulatory measures would be needed to meet the SIP's pesticides emissions target. To this end, the Pesticide Element provided that "ARB will develop a baseline inventory of estimated 1990 pesticidal VOC emissions based on 1991 pesticide use data * * *." *El Comite Para El Bienestar de Earlimart* v. *Helliker*, 416 F. Supp. 2d 912, 925 (E.D. Cal. 2006). ARB subsequently employed a different methodology which it deemed more accurate to calculate the baseline inventory. The plaintiffs sought to enforce the commitment to use the original methodology, claiming that the calculation of the baseline inventory constitutes an "emission standard or limitation." The district court disagreed:

> By its own terms, the baseline identifies emission sources and then quantifies the amount of emissions attributed to those sources. As defendants argue, once the sources of air pollution are identified, control strategies can then be formulated to control emissions entering the air from those sources. From all the above, I must conclude that the baseline is not an emission "standard" or "limitation" within the meaning of 42 U.S.C. 7604 (f)(1)–(4).

Id. at 928. In its opinion, the court distinguished *Bayview* and *CBE I*, pointing out that in those cases "the measures at issue were designed to reduce emissions." *Id.*

On appeal, the plaintiffs shifted their argument to claim that the baseline inventory and the calculation methodology were necessary elements of the overall enforceable commitment to reduce emissions in nonattainment areas. The Ninth Circuit agreed with the district court's conclusion that the baseline inventory was not an emission standard or limitation and rejected plaintiffs' arguments attempting "to transform the baseline inventory into an enforceable emission standard or limitation by bootstrapping it to the commitment to decide to adopt regulations, if necessary." *Id.* at 1073.

While Earthjustice cites the Ninth Circuit's *El Comite* opinion, its utility in analyzing ARB's commitments here is limited to that court's agreement with the district court's conclusion that neither the baseline nor the methodology qualifies as an independently enforceable aspect of the SIP. Rather, it is the district court's opinion, in distinguishing the commitments in *CBE* and *Bayview*, that provides insight into the situation at issue in our action. As the court recognized, a baseline inventory or the methodology used to calculate it, is not a measure to reduce emissions. It instead "identifies emission sources and then quantifies the amount of emissions attributed to those sources." In contrast, as stated previously, in the 2004 SIP and 2003 State Strategy, ARB commits to adopt and implement measures sufficient to achieve specified emission reductions by a date certain. As described above, a number of courts have found commitments substantially similar to ARB's here to be enforceable under CAA section 304(a).

Finally, EPA is not responding to Earthjustice's comment regarding Ventura because the comment is without sufficient specificity for us to know to what the comment refers. Nevertheless, we note that nothing precludes the State from submitting a SIP revision to alter the commitments approved by EPA, just as the State may choose to submit a revision to any provision of an approved SIP. If the State does so, commenters would have an opportunity to object to such a revision at the State and local levels during the notice-and-hearing processes for SIP adoption and would again have an opportunity to raise concerns during EPA's review process. However, unless and until such time as the State submits and EPA approves a revision to the commitments approved in this action, those commitments remain enforceable.

Comment: Earthjustice states that the 2004 SIP suggests that the State "may meet its commitment by adopting one or more of the control measures in Table 4–3 * * * one or more alternative measures, or * * * incentive programs, so long as the aggregate emission reduction commitment is achieved." 2004 Plan at 4–55. Earthjustice claims that these commitments are so vague that they cannot possibly be enforced against the State; because there is no requirement that the State take any specific actions, its commitments cannot be considered enforceable under Ninth Circuit case law. This is because

[14] In this passage, the court was referring specifically to the stationary source contingency measures in the Bay Area plan which contained a commitment to adopt such measures if emission targets were not met. The Plan identified a number of potential stationary sources but did not commit to any particular one. In discussing the transportation contingency measures, the court applied this same reasoning. *Id.* at 1456–1457.

they are not specific strategies based on emissions standards or limitations.

Response: We disagree. As stated in responses to previous comments, EPA believes that ARB's commitments to adopt and implement control measures to achieve the specified aggregate tonnage by the beginning of the 2010 ozone season are enforceable as an emission standard or limitation under CAA section 304. The fact that the State may meet its SIP obligation by adopting measures that are not specifically identified in the SIP, or through one of several available techniques, does not render the requirement to achieve the aggregate emission reductions unenforceable.

Comment: Earthjustice states CAA sections 110(a) and 172(c)(6) require SIPs to contain "enforceable emission limitations * * * as may be necessary or appropriate" to achieve attainment. Earthjustice further states that, while CAA section 110(k)(4) allows EPA to grant "conditional approval" of a SIP lacking certain statutory elements "based on a commitment of the state to adopt specific enforceable measures" by a date certain, the statute provides that the conditional approval automatically becomes a disapproval if the state fails to comply with the commitment within one year. Earthjustice then claims that EPA here appears to be trying to avoid this limitation by treating open-ended promises of the State to reduce emissions as enforceable commitments even though the State has never specified exactly what it commits to do. Earthjustice states that courts have rejected similar attempts to circumvent the statute's limitations on conditional approvals. To support this contention, Earthjustice cites *Sierra Club* v. *EPA*, 356 F.3d 295, 298 (DC Cir. 2004) as overturning EPA's conditional approval of SIPs based in part on the fact that the commitments identified no specific measures that the state would implement.

Response: As pertinent to the comment, *Sierra Club* involved EPA's conditional approval under section 110(k)(4) of SIPs lacking in their entirety RACM and ROP demonstrations and contingency measures based on letters submitted by states that committed to cure these deficiencies. The court rejected EPA's construction of section 110(k)(4) as contrary to the unambiguous statutory language requiring the state to commit to adopt *specific* enforceable measures. *Sierra Club* at 302. The court found that EPA's construction turned the section 110(k)(4) conditional approval into a means of circumventing SIP deadlines. *Id.* at 303.

EPA does not dispute the holding of *Sierra Club*. However that case is not germane to EPA's approval of ARB's commitments here because the Agency is not approving those commitments under section 110(k)(4). The relevant precedent is instead *BCCA*. The facts in *BCCA* were very similar to those presented here. In *BCCA*, EPA approved an enforceable commitment in the Houston ozone SIP to adopt and implement unspecified NO_x controls on a fixed schedule to achieve aggregate emission reductions. Petitioners claimed that EPA lacked authority under the CAA to approve a SIP containing an enforceable commitment to adopt unspecified control measures in the future. The court disagreed and found that section 110(k)(4) conditional approvals do not supplant EPA's practice of fully approving enforceable commitments:

> Nothing in the CAA speaks directly to enforceable commitments. The CAA does, however, provide EPA with great flexibility in approving SIPs. A SIP may contain "enforceable emission limitations and other control measures, means, or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate" to meet the CAA's requirements * * *. Thus, according to the plain language of the statute, SIPs may contain "means," "techniques" and/or "schedules and timetables for compliance" that the EPA considers "appropriate" for attainment so long as they are "enforceable."" *See Id.* § 7410(a)(2)(A). "Schedules and timetables" is broadly defined as "a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, prohibition or standard." 42 U.S.C. 7602(p). The remaining terms are not defined by the Act. Because the statute is silent on the issue of whether enforceable commitments are appropriate means, techniques, or schedules for attainment, EPA's interpretation allowing limited use of an enforceable commitment in the Houston SIP must be upheld if reasonable.

BCCA at 839–840. The court upheld EPA's approval of the commitment, finding that "EPA reasonably concluded that an enforceable commitment to adopt additional control measures on a fixed schedule was an 'appropriate' means, technique, or schedule or timetable for compliance" under sections 110(a)(2)(A) and 172(c)(6). *Id.* at 841. Thus the court recognized that sections 110(a)(2)(A) and 172(c)(6) provide a basis for EPA to approve enforceable commitments as distinct from the commitments contemplated by section 110(k)(4). See also *Environmental Defense* v. *EPA*, 369 F.3d 193, 209–210 (2nd Cir. 2004). As a result, contrary to Earthjustice's contention, section 110(k)(4) is not a bar to EPA's approval of ARB's enforceable commitments and that approval under section 110(k)(3) is permissible as an appropriate means, technique or schedule or timetable for compliance under sections 110(a)(2)(A) and 172(c)(6).

Comment: CRPE contends that the State's aggregate tonnage commitment is unenforceable as a practical matter. CRPE then states that enforcement of such a global commitment to adopt unidentified measures (e.g., State Strategy at II–A–13, 15, 16 and II–B–15, 23) to be implemented in the Valley by 2010 is extremely difficult given the open-ended commitment to adopt unspecified strategies. CRPE states that citizens cannot enforce vague control measures that do not commit ARB to any particular regulations by 2008 and citizens are left with enforcing the global tonnage amounts after 2010.

Response: CRPE does not explain why it believes that ARB's commitments are unenforceable. CRPE implies that it would be easier and/or more convenient for citizens to enforce a different type of commitment. Even assuming CRPE is correct, this does not equate to unenforceablity. Moreover, as seen above, the commitment in TCM 2, which the court found to be enforceable in *Bayview*, is directly analogous to ARB's commitments in the 2004 SIP and 2003 State Strategy. Thus, we do not agree that the commitments are unenforceable.

Comment: CRPE claims that all of the commitments in the 2003 State Strategy are unenforceable because they include promises by ARB staff to bring an unidentified measure to the ARB Board (State Strategy at II–A–13, 15, 16 and II–B–15, 23) and there is no commitment by the Board itself to adopt a particular strategy to achieve specific reductions by a specific implementation date. CRPE believes that the act of proposing a strategy to the Board is not a commitment to adopt a strategy and, citing 74 FR at 33938, that EPA recognizes this fundamental defect.

Response: The enforceable commitments in the 2004 SIP and the 2003 Strategy at issue here, as described above and in the proposal at 33938, do not refer to action by ARB staff to take certain measures to the Board. Rather, as described in detail above, the enforceable commitments at issue refer to "ARB" and/or "the State" and require it to adopt and implement measures to achieve specific reductions in NO_X and VOC emissions by the beginning of the 2010 ozone season. By adopting both the 2004 Plan and 2003 State Strategy, the Board endorsed the content of these

documents and committed the Board to take the actions mandated in them.

Comment: Earthjustice claims that the 2004 Plan simply states that ARB "estimates" that measures in the 2003 State Strategy will achieve 15 tpd VOC and 20 tpd NO_X reductions, noting that the Strategy was adopted before the Plan and therefore doesn't mention the quantitative commitments (State Strategy at ES–12, 1–7 through 1–9, 1–23 through 1–26). Earthjustice concludes that this estimate was clearly wrong, as the State admits it is coming up short.

Response: The 2004 Plan at section 4.7.1 states that "ARB staff estimates that the near-term measures in the Statewide Strategy will provide 15 tpd ROG and 20 tpd NO_X in the San Joaquin Valley in 2010." The near-term measures in the 2003 State Strategy are reproduced as Table 4–3 in the 2004 Plan. Because the State's enforceable commitments are to achieve, independent of any estimates in the plan, aggregate emission reductions from one or more of the control measures in Table 4–3, by adopting one or more alternative control measures, or by implementing incentive programs, it was not necessary for the State to quantify the measures in Table 4–3.

To the extent that Earthjustice in this comment intends to argue that the 5 tpd VOC and 20 tpd NO_X in ARB's commitments are merely estimates and therefore do not constitute enforceable obligations, we disagree for the reasons stated in our responses to comments above.

E. Rate of Progress Demonstration

Comment: Earthjustice asserts that the method used in the 2004 SIP to demonstrate ROP is not allowed by CAA section 182(c)(2)(B) because the plan allows for the averaging of reductions over more than 3 years while the CAA allows averaging over 3-year periods only. It also argues that the State's demonstration relies on carrying forward excess emissions reductions from previous milestone years and that this is also inconsistent with the CAA because it again allows emissions reductions to be averaged over longer periods than the 3-year period expressly allowed. Finally, Earthjustice claims that without carrying forward the excess emissions reductions from previous milestones, it does not appear that the District has continued to make the required reasonable further progress in reducing VOC emissions.

Response: The post-1996 ROP requirement in CAA section 182(c)(2)(B), while simple in concept, is among the most complex of the Act's nonattainment area plan requirements to apply in practice. *See*, for example, the General Preamble's discussion at 13516 on how to calculate a post-1996 ROP target. To respond to these comments, several points need to be understood about the ROP demonstration requirement:

1. A state demonstrates that it meets the required ROP by showing that total emissions in its area will be at or below a target level of emissions for a specified year.[15] This target level of emissions, referred to as the ROP milestone, is calculated for each of the area's milestone dates (e.g., 1996, 1999, 2002, etc.) according to CAA requirements and the procedures in the General Preamble. Each successive milestone reflects the accumulated ROP from the preceding milestone periods (e.g., 1990–1996, 1997–1999, etc.). States often convert this target level of emissions into the emissions reductions needed to show ROP by subtracting it from its baseline inventory for that milestone year.

Plotted on a graph where the x-axis is the milestone years between 1990 and an area's attainment date and the y-axis is the milestone target level, the ROP milestones would produce a slightly concave downward line. This line establishes the maximum level of allowable emissions for the area to meet the ROP requirement. The CAA's "averaged over three years" requirement means that the total emissions level in the area can rise above the line during that 3-year period between milestone dates provided it is below the line by the milestone date. An example of an ROP graph can be found at 66 FR 42480, 42843 (August 13, 2001), proposed approval of New York's 2002, 2005, and 2007 ROP plans.

EPA has consistently treated ROP milestones as target levels of emissions. *See* for example, 61 FR 10921 (March 18, 1996), proposed approval of California's ROP and attainment plans for 7 nonattainment areas; 62 FR 37175, 37177 (July 11, 1997), proposed approval of Texas's 15 percent ROP plans for Dallas, El Paso and Houston; 65 FR 11525, 11530 (March 3, 2000), proposed approval of Illinois' post-1996 ROP plan for Chicago; and 70 FR 2085, 2088 (January 12, 2005), proposed approval of the Washington, DC area's post-96 and post-99 ROP plans. Thus, understood as an emissions level target, it is clear that so long as a state can demonstrate that total emissions levels in its area are below each ROP milestone, it does not need to show an actual 9 percent emission reduction in each 3-year period. Therefore, the comment that the manner in which California demonstrated ROP is not in compliance with the Act is unfounded.

2. The commenter is incorrect that the CAA forbids carrying forward of excess emissions reductions. In fact, section 182(c)(2)(C) specifically provides that emission reductions beyond the 15 percent required under section 182(b)(1) for the period 1990–1996 are creditable toward the ROP requirement in section 182(c)(2): "The reductions creditable for the period beginning 6 years after November 15, 1996 *shall* include reductions that occurred before such period, computed in accordance with [section 182(b)(1)], that exceed the 15 percent amount of reductions required under [section 182 subsection (b)(1)]). (Emphasis added.) While this sentence refers explicitly only to carrying forward excess reductions into the 1997–1999 period, we do not believe that Congress intended to prohibit carrying forward of excess emissions reductions into other ROP periods. Congress was interested in both expediting emissions reductions and reducing the costs of air pollution controls. The first would be served by rewarding States for early implementation by allowing the carryover of credit and the latter by not ignoring otherwise creditable emissions reductions that had already occurred. *See Ass'n of Irritated Residents* v. *EPA*, 423 F.3d 989, 996 (In the context of allowing credit for past emission reductions under CAA section 189(d) for PM–10 plans: "[b]y allowing such crediting, the EPA provides a material incentive for implementing the most effective measures as quickly as possible.").

3. States are allowed to substitute NO_X reductions for VOC reductions in any post-1996 ROP demonstration (*see* CAA section 182(c)(2)(C)) and may use NO_X reductions exclusively for post-1996 ROP demonstrations. *See* 70 FR 25688 25697 (May 13, 2005); approval of the Washington, DC area's 1-hour ozone attainment demonstration; and 68 FR 7476, 7486 (February 14, 2003), approval of Rhode Island's 1-hour ozone attainment demonstration. SJV has an approved 15 percent ROP demonstration and thus has already met its minimum VOC ROP obligation. See 62 FR at 1172. It may, therefore, rely exclusively on NO_X reductions to meet its 2008 and 2010 ROP requirements

[15] From the General Preamble at 13508: "Once the 1996 target level of emissions is calculated, States must develop whatever control strategies are needed to meet that target. * * * The assessment of whether an area has met the RFP requirement in 1996 will be based on whether the area is at or below the 1996 target level of emissions and not whether the area has achieved a certain actual reduction relative to having maintained the current control strategy."

and the commenter's contention that the District has not met its required VOC ROP requirement is baseless.

Comment: CRPE argues that the CAA requires that states only take credit for reductions from SIP-approved measures in ROP demonstrations, citing CAA section 182(b)(1)(D). CRPE also argues that EPA's longstanding interpretation of the ROP provision also limits credit to SIP-approved measures, citing our proposed approval of the ROP demonstration in the 1999 amendment to the 1997 1-hour ozone standard plan for the South Coast Air Basin (SCAB) (65 FR 6091, 6098 (February 8, 2000)) which cites the General Preamble at 13517.

Response: CAA section 182(b)(1)(C) does not limit emissions reductions creditable in ROP demonstrations to just those reductions from SIP-approved rules, it also allows credit from rules promulgated by the Administrator (e.g., FMVCP), and CAA title V federal operating permits. Neither federal measures nor title V permits are in the SIP.

EPA has approved numerous ROP demonstrations that rely on reductions from Federal measures. See, for example, 61 FR 11735 (March 22, 1996), approval of Wisconsin's 15 percent ROP plan and contingency measures; 66 FR 586 (January 3, 2001) approval of the Washington, DC area's attainment and post-96 ROP plans; and 66 FR 54143 (October 26, 2001), approval of Pennsylvania's post-96 ROP plan for the Philadelphia area. As discussed in the proposal, we have historically treated California's waiver measures similarly to the Federal motor vehicle control requirements. 74 FR at 33939.

In the February 2000 proposed rule cited by the commenter, EPA proposed to approve the ROP demonstration for the SCAB. This demonstration relied explicitly on reductions from SIP-approved District rules and SIP-approved commitments from the District and State; therefore, we limited our description of the ROP requirement to those ROP provisions that were applicable to our action. By doing so, we did not rewrite the Act or the General Preamble to limit creditable reductions in ROP demonstrations to SIP-approved measures only. We note that although the ROP demonstration in the South Coast plan relied explicitly only on reductions from SIP-approved rules and commitments, it relied implicitly on ARB's adopted and implemented mobile source program, reductions from which are incorporated into the South Coast plan's baseline inventory, to generate the majority of emissions reductions needed for ROP.

F. Attainment Demonstration

Comment: Earthjustice comments that SJV will not attain the 1-hour ozone standard by 2010 because there have been too many exceedances of the standard in 2008 and 2009 and that these exceedances show that the attainment demonstration is not working and is not approvable. It also comments that EPA has made clear that attainment by the deadline requires that the three years leading up to that deadline must be clean. In support of its position, the commenter cites EPA's PM2.5 implementation rule at 40 CFR § 51.1000; the preamble to the $PM_{2.5}$ implementation rule at 72 FR 20586, 20600 (April 25, 2007); and EPA's "Response to Comments Document, Finalizing Approval of the PM–10 State Implementation Plan for the Clark County Serious PM–10 Nonattainment Area Annual and 24-Hour PM–10 Standards" at page 41 (April 23, 2004).

Response: Consistent with the CAA and EPA regulations and policy, the 2004 SJV 1-hour ozone plan demonstrates that the emissions reductions needed to prevent future violations of the 1-hour ozone standard would be in place by the beginning of the 2010 ozone season rather than by the beginning of the 2008 ozone season. See 2004 SIP, p. 5–5.

The three cites in the commenter's letter are all to descriptions of attainment *determinations*. The determination of attainment required by CAA section 181(b)(2), which is made by reviewing ambient air quality monitoring data after the attainment date, is distinctly different from the demonstration of attainment required by CAA section 182(c)(2), which is based on projections of future air quality levels and submitted before the attainment date. For the 1-hour ozone standard, an attainment determination is based on monitored air quality levels in the three years preceding the attainment date. General Preamble at 13506. In acting on the 2004 SJV 1-hour ozone plan under CAA section 110(k), we are not making an attainment determination.

An attainment demonstration is based on air quality modeling showing that projected emissions in the attainment year will be at or below the level needed to prevent violations of the relevant ambient air quality standard. For ozone, the attainment year is defined as the calendar year that includes the last full ozone season prior to the statutory attainment date. 40 CFR 51.900(g). More simply, ozone attainment demonstrations show that the air quality will be at or below the level of the standard no later than the beginning of the ozone season immediately prior to the attainment date. EPA has never interpreted the Act to require that the demonstration show that air quality levels will be at or below the level of the standard for each of the three ozone seasons prior to the attainment date.

Following this interpretation, the 2004 SIP does not demonstrate that there would be no violations of the revoked 1-hour ozone standard in 2008 or 2009. Rather it demonstrates that clean air would *begin* with the 2010 ozone season. Because we are still months away from the start of the 2010 ozone season and air quality trends show decreasing number of days over the standard, we believe it is premature to say the 2004 1-hour ozone plan will not result in attainment by the SJV area's ultimate applicable attainment date.

Our policy on attainment demonstrations is consistent with the ozone attainment provisions in subpart 2 of title 1, part D of the CAA. The program Congress crafted here for ozone attainment does not require that all measures needed to attain the standard be implemented three years prior to the area's attainment date. For example, moderate areas were required by section 182(b)(1) to provide for VOC emissions reductions of 15 percent reduction by November 15, 1996 which was also the attainment date for these areas. For areas classified serious and above, CAA section 182(c)(2)(B) requires that ROP of 3 percent per year averaged over 3 years "until the attainment date" (a total of 9 percent reduction in emissions in the 3 years leading up to an area's attainment date). EPA does not believe that Congress intended these mandatory reductions to be in excess of what is needed to attain.

This position is also consistent with the attainment date extension provisions in CAA section 181(a)(5). Under this section, an area that does not have three-years of data meeting the ozone standard by its attainment date but has complied with all requirements and commitments pertaining to the area in the applicable implementation plan and has no more than one exceedance of the standard in the attainment year, may receive a one-year extension of its attainment date. Assuming these conditions are again met the following year, the area may receive an additional one-year extension. If the area has no more than one exceedance in this final extension year, then it will have three years of data indicating that it has attained the ozone standard.

EPA has consistently taken this position in guidance and in our

approval of 1-hour ozone attainment demonstrations. Our ozone modeling guidance, which was issued less than a year after the 1990 Amendments were enacted, requires States to model the ozone season before the attainment date and not the third ozone season before the attainment date. *See* Chapter 6 "Attainment Demonstrations," *Guideline for Regulatory Application of the Urban Air Shed Model* (July 1991, OAQPS, EPA).

The ozone attainment demonstrations that EPA has approved since the CAA Amendments of 1990 have been based on this modeling guidance and demonstrate attainment only for the attainment year. *See*, for example, 61 FR 10921 (March 18, 1996) and 62 FR 1150 (January 8, 1997), proposed and final approval of California's attainment plans for 7 nonattainment areas; 66 FR 54143 (October 25, 2001), approval of Pennsylvania's 1-hour ozone attainment plan for the Philadelphia area; and 67 FR 30574 (May 7, 2002), approval of Georgia's 1-hour ozone attainment plan for Atlanta.

G. Contingency Measures

Comment: Earthjustice states that the purpose of contingency measures following an area's failure to attain is to provide extra emissions reductions that are needed to attain. It then asserts that EPA's approach of allowing areas to credit emissions reductions from measures that are already in place that are not needed for attainment is arbitrary and illegal because, if the area does fail to attain, the reductions from these measures are not surplus and more are needed. It argues further that EPA's policy allows plans to be approved without the "safety net that Congress envisioned," so that when the SJV area fails to attain in 2010 there is nothing in the plan that can take immediate effect without further action by the State or the District to address such a failure.

Response: We did not propose to credit "extra" or "surplus" reductions in the attainment demonstration as contingency measures in our proposed approval of the attainment contingency provisions in the 2004 SJV 1-hour ozone plan.[16] In our July 14, 2009 proposal and again in our October 2, 2009 supplementary proposal, we made it clear that there were no excess emissions reductions from adopted measures in the attainment demonstration. *See* 74 FR at 33944 and 74 FR 50936, 50937. Nevertheless, the commenter seems to believe that the reductions the State credits as its attainment contingency measures will already be in place by the SJV area's attainment year, 2010, and thus will already be contributing to reduced ozone levels in that year. This is not the case here.

The measures relied on for attainment contingency measures in the 2004 SJV 1-hour ozone plan are existing State and federal on- and off-road new engine standards.[17] Emissions reductions from these types of measures accumulate as the engine fleet turns over, resulting in increasing benefits over time. All of the reductions from these measures that are used by the State to show compliance with the attainment contingency measures requirement occur in 2011, the year after the SJV area's attainment date. It is this additional benefit, i.e., an additional 15.7 tpd NO_X and 8.6 tpd VOC in reductions beyond the reductions from these measures in 2010, to be realized in the SJV area in 2011, that the State uses to meet the contingency measures requirement. 74 FR 50936, 50938 (Table 1). Thus these reductions will not be reflected in 2010 ambient air quality levels but will provide air quality benefits in 2011. In this respect, the emission reductions from the State and federal on- and off-road new engine standards that serve as contingency measures in the SJV area are virtually identical in operation to the type of contingency measure that the commenter appears to advocate, e.g., a control measure adopted by the State or District that would remain unimplemented, and thus yielding no emission reductions until triggered by a failure of the area to attain the standard.

In *LEAN* v. *EPA*, 382 F.3d 575 (5th Cir. 2004), the court upheld EPA's approval of contingency measures that relied on reductions that occurred one year prior to the Baton Rouge area's failure to attain but that continued on an annual basis thereafter and were, among other things, surplus. *Id.* at 583. In other words, as the court framed it, "the effects continue to manifest an effect after the plan fails." *Id.* The court found that "[t]he setting aside of a continuing, surplus emissions reduction fits neatly within the CAA's requirement that a necessary element of a contingency measure is that it must 'take effect without further action by the State or [EPA]'" *Id.* at 584. In *LEAN*, in contrast to the situation here, the air quality benefits from the contingency measures occurred prior to a potential plan failure and the emission reductions from these measures did not increase thereafter, but continued at the same rate. Thus the contingency measures in the 2004 SJV 1-hour ozone plan, to a greater extent than in *LEAN*, fulfill the purpose of such measures "to provide a cushion while the plan is being revised to meet the missed milestone." 72 FR 20586, 20642.

Comment: Earthjustice notes that EPA's proposal to approve the updated contingency measure demonstration rests on crediting emissions reductions from State programs that are not enforceable components of the plan. It asserts that the CAA requires that all State and local control measures relied upon to satisfy the planning requirements of the Act be included in the implementation plan, citing the language in CAA sections 172(c)(9) and 182(c)(9) and that it is not sufficient to simply identify measures because they could be revised or revoked without EPA approval under section 110(l), or would be unenforceable under the CAA if the State were to decide not to implement them.

Response: In this particular case, all measures credited as contingency measures are State and federal on- or off-road mobile source controls adopted prior to September 2002. These controls include waiver measures which EPA believes may be used to meet the CAA's contingency measures requirement. In our response to comments on the treatment of waiver measures above, we address at length our view that such measures can be relied on to meet the CAA's planning requirements without being approved by EPA into the SIP. We also address in that section the commenter's concerns regarding enforceability and antibacksliding.

We note further that since the State has been implementing these emission standards since 2002, the likelihood that the State will, at this late date, suddenly decide to stop implementing them is negligible. Moreover, engines complying with these standards are already being sold and therefore the technology required to meet them has been demonstrated, making it even less likely that the State would stop implementing

[16] By "surplus" and "extra" emissions reductions, the commenter is referring to emissions reductions that are realized in the attainment year that are more than the emissions reductions needed to demonstrate attainment. We refer to these additional reductions as "excess reductions in the attainment demonstration."

[17] EPA has long allowed states to use already implemented measures to meet the CAA sections 172(c)(9) and 182(c)(9) contingency measures requirement, provided that the reductions from these measures were not also relied on for attainment and/or ROP, i.e., in excess to the attainment demonstration or ROP. *See* 62 FR 15844 (April 3, 1997); 62 FR 66279 (December 18, 1997); 66 FR 30811 (June 8, 2001); 66 FR 586 and 66 FR 634 (January 3, 2001). In these rulemakings, however, unlike the situation here, the reductions used for contingency measures were realized in the attainment year, i.e., they were excess reductions in the attainment demonstration, and continued without increasing into following years.

them. However, in the unlikely event that the State should relax or revoke a measure that is relied on for contingency, EPA has mechanisms other than section 110(l) to assure adequate contingency measures, including finding the SIP inadequate under section 110(k)(5).

We note also that since 2002, in part to fulfill its emissions reductions commitment, the State has adopted other control measures that reduce emissions from on- and off-road vehicles which are not considered in calculating the post-2010 emissions reductions for contingency measures. See Goldstene letter. We also note that the State and District have submitted the 2007 8-hour ozone plan that includes additional post-2010 emissions reductions.

Comment: Earthjustice claims that our proposal on the appropriate treatment of emissions reductions from waiver measures makes no mention of contingency measures or the specific statutory language in sections 172(c)(9) or 182(c)(9) which provide that "[s]uch measures shall be included in the plan revision * * *." It then asserts that the extension of our policy on waiver measures to contingency measures ignores the plain language of sections 172(c)(9) and 182(c)(9) and that EPA has not shown that it has allowed the use of measures that are not in the SIP for contingency measures. Finally, the commenter states that EPA cannot claim that Congress in the 1990 Amendments ratified the practice of allowing waiver measures as contingency measures because EPA has never before adopted it.

Response: Our discussion in the proposal regarding the SIP crediting of emissions reductions from waiver measures does not address the SIP purposes for which these reductions would be used. Our discussion presumed that waiver measures could be credited for any SIP purpose for which similar federal measures can be used: "EPA treated [the waiver] rules similarly to the federal motor vehicle control requirements, which EPA has always allowed states to credit in their SIPs without submitting the program as a SIP revision." 74 FR at 33939. While there was no explicit statutory requirement for contingency measures prior to the 1990 CAA Amendments, there is no reason to believe that Congress would make a distinction between measures creditable in attainment and ROP demonstrations and those creditable for contingency measures.

EPA has long allowed States to use federal measures as contingency measures. *See* 62 FR 15844, 15847 (April 3, 1997), approval of Indiana's 15 percent ROP plan for the Chicago-Gary-Lake County 1-hour ozone nonattainment area; 62 FR 66279 (December 18, 1997), approval of Illinois' 15 percent ROP plans for the Chicago-Gary-Lake County 1-hour ozone nonattainment area and East St. Louis 1-hour ozone nonattainment area; 66 FR 30811 (June 8, 2001), approval of Rhode Island's post-96 ROP plan; 55 FR 33996, 33999 (June 26, 2001), approval of St. Louis's 1-hour ozone attainment plan; 66 FR 40802, 40824 (August 3, 2001) finalized at 66 FR 56944 (November 13, 2001), approval of Indiana's attainment and ROP demonstrations and related contingency measures for the Chicago-Gary-Lake County 1-hour ozone nonattainment area; 66 FR 56904, 56905 (November 13, 2001) approval of Illinois's attainment and ROP demonstrations and related contingency measures for the Chicago-Gary-Lake County 1-hour ozone nonattainment area.

H. VMT Offset Requirement

Comments: CRPE alleges that the 2004 SIP fails to include transportation control measures (TCM) as required by CAA section 182(d)(1)(A), asserting that the plain language, legislative history, and the structure of the CAA require TCMs when vehicle miles traveled (VMT) increase in a region. In support of its position, the Center quotes a statement from the legislative history of the 1990 CAA Amendments: "[t]he baseline for determining whether there has been growth in emissions due to increased VMT is the level of vehicle emissions that would occur if VMT held constant in the area." 2 S. Comm. on Environment & Public Works, 103rd Cong., A Legislative History of the Clean Air Act Amendments of 1990 (Comm. Print 1993) at 3266 (H.R. Rep. No. 101–490 (1990)).

Response: CAA section 182(d)(1)(A) requires a state to submit a SIP revision, for severe and extreme nonattainment areas such as the SJV area, that identifies and adopts specific enforceable transportation control strategies and TCMs to offset any growth in emissions from growth in VMT or numbers of vehicle trips in such areas. Since the statutory language plainly requires that growth in emissions be offset, we interpret this provision to require TCMs only when there is growth in emissions due to growth in VMT or vehicle trips and not when there is simply growth in VMT or vehicle trips without a consequential growth in emissions. Because the 2004 1-hour ozone plan shows that through the attainment year there will be no increase in motor vehicle emissions caused by increased VMT or numbers of vehicle trips, the statutory duty to adopt and submit TCMs to offset emissions growth has not been triggered. See 2008 Clarifications, page 9, (Table 3) and 74 FR at 33945 (Table 6).

We discuss CAA section 182(d)(1)(A), as well as the excerpt from the legislative history of the 1990 CAA Amendments cited by the commenter, in the General Preamble at 13522–13523.

We have consistently applied this interpretation in our previous approvals of SIPs implementing the provision. See, for example, 60 FR 48896 (September 21, 1995) approval of Illinois' vehicle miles traveled plan for the Chicago area; 62 FR 23410 (Apr. 30, 1997) and 62 FR 35100 (Jun. 30, 1997), proposed and final approval of New Jersey's 15 percent ROP plan and other provisions for the New York-New Jersey-Connecticut ozone nonattainment area; 66 FR 23849 (May 10, 2001), approval of New York's attainment demonstration and related provisions for the New York-New Jersey-Connecticut ozone nonattainment area; 66 FR 57247 (November 14, 2001), approval of the VMT offset plan for the Houston-Galveston ozone nonattainment area; 70 FR 25688 (May 13, 2005), approval of the Washington, DC area's 1-hour attainment demonstration and related provisions; 70 FR 34358 (June 14, 2005), approval of Atlanta's VMT plan; and 74 FR 10176, 10179 (March 10, 2009), approval/disapproval of the 2004 1-hour ozone plan for the South Coast (California) Air Basin.

Comments: CRPE asserts that VMT has increased within the San Joaquin Valley and that vehicle emissions are higher than they would be if VMT held constant in the area, so EPA's failure to require TCMs violates the Act.

Response: For the reasons discussed in response to the previous comment, we believe that section 182(d)(1)(A) only requires the offset of any growth in emissions due to VMT growth and not the offset of any growth in VMT in the absence of consequential growth of motor vehicle emissions. Consistent with our guidance in the General Preamble, the 2004 1-hour ozone plan demonstrates that there is no year-to-year growth in motor vehicle emissions due to VMT growth over the life of the plan. See 2008 Clarifications, p. 9. Therefore, no additional TCMs are required, and EPA may approve the 2004 SIP as meeting the CAA section 182(d)(1)(A). See discussion at 74 FR at 33944.

H. Clean Fuels/Technology for Boilers

Comment: Earthjustice notes EPA's statements that the District's two rules governing gas- and liquid-fired boilers, Rules 4306 and 4307, require advanced NO_X controls and have been approved as RACT and that the District's rule covering solid-fuel-fired boilers, Rule 4352, also requires advanced NO_X control. It then asserts that EPA has no rational basis for these claims and EPA has not identified what kinds of advanced controls are in place at sources covered by these rules. The commenter included several permits for solid-fuel boilers that operate in the SJV, asserting that permits do not require catalytic control technology or comparably effective methods to reduce NO_X emissions.

Response: Section 182(e)(3) of the Act requires that SIPs for extreme ozone nonattainment areas contain provisions requiring that each new, modified, and existing electric utility and industrial and commercial boiler that emits more than 25 tpy of NO_X either: (1) Burn as its primary fuel a clean fuel (natural gas, methanol, or ethanol, or a comparably low-polluting fuel), or (2) use advanced control technology (such as catalytic control technology) or other comparably effective control "catalytic control technology" was intended generally to refer to selective catalytic reduction (SCR).

SJVAPCD Rule 4306—Boilers, Steam Generators and Process Heaters—Phase 3; Rule 4307—Boilers, Steam Generators, and Process Heaters—2.0 MMBtu/hr To 5.0 MMBtu/hr; and Rule 4309—Boilers, Steam Generators, and Process Heaters—0.075 MMBtu/hr To 2.0 MMBtu/hr apply to gas- and liquid-fueled boilers. Because of the fuel-input rate limits (5.0 MMBtu/hr and 2.0 MMBTU/hr) in Rules 4307 and 4308, as approved in the SIP, boilers subject to these rules are too small to be subject to CAA section 182(e)(3) (i.e., these boilers do not emit greater than 25 tpy of NO_X). We discussed in the proposal that boilers subject to Rule 4306 could only comply with the limits in that rule through the use of advanced control technologies. See 74 FR at 33945. SJVAPCD Rule 4352—Solid Fuel Fired Boilers, Steam Generators, and Process Heater (amended May 18, 2006) applies to boilers that burn a variety of solid fuels. We discuss Rule 4352 further below.

The State submitted the 2004 SIP on November 15, 2004. As of that date, the last full year of inventory data available to the District to determine if boilers in the SJV area met the section 182(e)(3) requirement was 2003. Inventory data available from ARB's emissions inventory database (*http://www.arb.ca.gov/ei/emissiondata.htm*) show that, in 2003, all boilers that emitted 25 tpy NO_X were either fired on natural gas or solid fuel. This list is provided in the TSD.

SJVAPCD Rule 4352—Solid Fuel Fired Boilers, Steam Generators, and Process Heater (amended May 18, 2006) applies to commercial and industrial boilers (in addition to other types of emission units) at facilities that potentially emit 10 tpy or more of NO_X, which includes all boilers at such facilities that emit more than 25 tpy of NO_X. All of the NO_X emission limits in the current rule effectively require operation of Selective Noncatalytic Reduction (SNCR) control systems. As discussed below, we believe SNCR is "comparably effective" to SCR for the affected sources, and thus fulfills CAA section 182(e)(3) requirements for these affected sources. SNCR also appears to achieve NO_X emissions reductions comparable to combustion of clean fuels at these types of boilers.[18]

According to information in EPA's RACT/BACT/LAER Clearinghouse (*http://cfpub.epa.gov/rblc/htm/bl02.cfm*), recent Prevention of Significant Deterioration (PSD) permits contain emission limits for coal-fired boilers ranging from 0.067 lbs/million Btu (MMBtu) (for large coal-fired boilers with SCR and low-NO_X burner technology) to 0.1 lbs/MMBtu (for medium-sized coal-fired boilers with SNCR). These limits reflect Best Available Control Technology (BACT) determinations under the PSD program. See RACT/BACT/LAER Clearinghouse. According to the 1994 ACT for industrial/commercial/institutional boilers (Table 2–6), wood-fired watertube boilers with SCR can achieve NO_X emissions of 0.22 lb/MMBtu. The 1994 ACT does not contain emission levels for wood-fired fluid bed combustion boilers with SCR but states that this type of unit with SNCR can achieve NO_X emission limits ranging from 0.03 to 0.20 lb/MMBtu.

Our review of these emission ranges indicates that although emission rates can vary according to fuel type and boiler size, generally SNCR controls are comparably effective to SCR for boilers firing wood (biomass), municipal solid waste, and many other types of solid fuels. As a general matter, SNCR is also comparably effective to SCR control for circulating fluidized bed coal-fired boilers of less than 50 MW electric generation capacity. For coal-fired boilers, we have focused our review on circulating fluidized bed boilers of less than 50 MW electric generation capacity because all existing coal-fired boilers in the SJV are of this type and below this size. See SJVAPCD, "District Permitted Solid Fuel Boilers," found in the docket for this rulemaking. The emission levels achieved by SNCR control systems are also generally comparable to the uncontrolled NO_X emissions from boilers firing clean fuels such as natural gas, which may range from 0.07 to 0.45 lb/MMBtu (Table 2–2 in the 1994 ACT for ICI boilers). SNCR control systems consistently achieve up to 80 percent NO_X emissions reductions and are compatible with almost all solid fuel-fired boiler operations, while other controls may in some cases be sensitive to catalyst poisoning and other technical constraints.

As to boilers that emit above 25 tpy of NO_X, we note that, as a practical matter, only existing boilers in the SJV are likely to be constrained by the NO_X emission limits in Rule 4352, as all new boilers that potentially emit above 25 tpy and all major modifications at existing boilers will also be subject to the more stringent control technology requirements of the Nonattainment New Source Review (NSR) or PSD permit programs. The requirements of Rule 4352 are generally applicable to this source category and do not supplant any more stringent control requirements that apply on a case-by-case basis under the NSR or PSD permit programs.

Additionally, according to a list of permitted facilities in the SJV provided by the District, all permitted units subject to Rule 4352 are equipped with SNCR. This list may be found in the docket for this rule. The permits attached by the commenter all state that the units involved have ammonia injection, another name for SNCR.

K. Other Comments

Comment: CRPE provided extensive comments on the alleged unenforceability of the pesticide element in the 2003 State Strategy and argued that EPA should disapprove it.

Response: CRPE's comments on the pesticide element are not germane to the action we are taking here and we will not address their specifics. EPA proposed no action on the pesticide element in the 2003 State Strategy as part of its action on the 2004 SJV 1-hour ozone plan. As we noted in the proposal

[18] We proposed to approve Rule 4352 as meeting the CAA section 182(b)(1) RACT requirement on May 30, 2007 at 72 FR 29901. Concurrent with this May 30, 2007 proposal, we also approved Rule 4352 in a direct final action. See 72 FR 29887. Because we received adverse comments on this direct final action, we withdrew it on July 30, 2007 (72 FR 41450). On December 9, 2009 we reproposed to approve Rule 4352 into the SIP but to disapprove the District's demonstration that the rule met the RACT requirement. *See* 74 FR 65042.

and acknowledged by the commenter, the plan does not rely on emissions reductions from the pesticide element to demonstrate attainment or ROP. *See* 74 FR at 39936, ftn. 7.

Comment: CRPE comments that EPA should not allow emissions reduction credit for SJVAPCD Rule 4570 because we have proposed to disapprove the rule for not meeting the CAA's requirement for RACT.

Response: On July 14, 2009, EPA proposed a limited approval/limited disapproval of Rule 4570, Confined Animal Facilities. First we proposed to approve the rule into the California SIP under CAA section 110(k) as a SIP strengthening. Second, we proposed to disapprove the District's demonstration that the rule meets the RACT provisions of CAA section 182(b)(2). *See* 74 FR 33948. The limited approval means that the rule is an enforceable part of the SIP. The limited disapproval requires the District to provide additional documentation and/or rule revisions to assure that the rule is RACT in order to avoid the imposition of sanctions under CAA section 179 and the promulgation of a FIP under CAA section 110(c). We are finalizing our action on Rule 4570 concurrent with this action on the SJV 1-hour ozone plan. Because Rule 4570 is now approved into the SIP, emissions reductions from it can be credited in the plan's attainment and ROP demonstrations and for other CAA requirements.

Comment: CRPE comments that allowing emissions reduction credit for compliance with menu option A.1 in Rule 4570 (feed according to National Research Council (NRC) Guidelines) for dairy, beef feedlot, and other cattle facilities is arbitrary and capricious and an abuse of discretion because these reductions are already reflected in the baseline emissions factor used to calculate total emissions from dairies and other cattle related operations. It then claims that if the 10 percent emissions reduction credit for option A.1. was eliminated, then emissions reductions from Rule 4570 would drop from 7,563 tons per year (21 tons per day) to 5,632 tons per year (15.5 tons per day). The Center included a number of documents in support of its comments on the emissions reductions.

Response: In the 2004 SIP, reductions from the Rule 4570 are estimated to be 17.7 tpd or 28 percent of the baseline inventory for confined animal facilities. *See* 2008 Clarifications at 7 and 74 FR at 33937 (Table 2). In determining the emissions reductions from the rule, SJVAPCD conservatively estimated that compliance with menu option A.1. would reduce emissions by 10 percent over the baseline.

The District initially adopted Rule 4570 in June 2006 after conducting public workshops and providing a public review and comment period on both the draft rule and its estimate of the Rule's potential emissions reductions. *See* Final Draft Staff Report for Rule 4570, p. 50.[19] During this public process, the Center submitted comments similar to the ones it makes here. In response to these comments, the District noted that its emissions reductions estimate was based on a number of research studies showing that changes in animals' diets would result in VOC emissions reductions and that the 10 percent reduction it was using was at the low end of the range of effectiveness seen in this research. It also noted that the information available in the studies used to establish the baseline emission factor were not conclusive on whether the animals in those studies were fed according to the NRC guidelines and thus the baseline did not necessarily include reductions associated with a NRC diet. See Final Draft Staff Report for Rule 4570, Appendix A, p. 12.

The District based its estimated emissions reductions for Rule 4570 on a careful consideration of the information then available and used conservative (i.e., low) estimates of the potential emissions reductions. We have reviewed the District's analysis and find it reasonable. Final Draft Staff Report for Rule 4570, p. 24. More specifically, we do not believe that it overestimates the reductions from menu option A.1. as alleged by the commenter.

We note that the Center raised this specific issue in State court litigation on Rule 4570. The courts found for the District on this issue. *See Association of Irritated Residents* v. *SJVAPCD* (2008), 168 Cal. App. 4th 535, 553–554.

Comment: CRPE argues that Rule 4570 codifies existing practices and, therefore, will not generate emissions reductions. Citing the District's Staff Report for Rule 4570, it claims that the District admits that many of the control measures are currently being implemented and that the District defends its rule as an anti-backsliding measure that will ensure that current voluntary practices are not abandoned. CRPE then asserts that the approach that the District has taken violates the statutory requirement that rules must reduce emissions.

Response: The District believes and we concur that Rule 4570 will generate significant emission reductions. Simply because a practice is an existing industry practice does not mean that every facility uses it or uses it consistently.

The commenter does not cite the provision in the CAA that it believes requires, as condition of approval, that SIP rules must reduce emissions. EPA finds nothing in the CAA that requires that rules approved into the SIP by EPA result in direct and quantifiable emission reductions. We frequently approve rules and rule revisions that merely clarify existing requirements and are not expected to reduce emissions demonstratively.

A similar argument was raised in response to our 2005 proposal to approve SJVAPCD Rule 4550, Conservation Management Practices (CMP) for agricultural sources of PM–10. The commenter in that instance claimed that the emission reductions estimated to be achieved by the rule were inaccurate and inflated because the estimate double-counted emission reductions already being achieved from practices already in common use by growers. In our response to this argument we stated that "it was understood that some agricultural sites may have been employing practices not required by regulation at that time, and that these existing practices may not have been accounted for in the emission inventory. Rule 4550 makes these practices mandatory and federally enforceable, allowing the District to take credit for the emission reductions * * *." 71 FR 7683 (February 14, 2006)

Comment: CRPE claims that the District guessed or applied a default emissions reduction estimate to come up with a 36 percent reduction of VOC emissions from dairy operations for Rule 4570. It then asserts that approval of the rule with "fictitious" reductions based on commonly-used industry practices would be arbitrary and capricious because the majority of controls have no factual support whatsoever.

Response: The District used the best information available at the time it adopted Rule 4570 and applied that information reasonably to determine the emissions reductions estimates for the rule. *See* Rule 4570 Staff Report, p. 22. As noted above, simply because a practice is commonly used in an industry does not mean that it is used by every facility or used consistently by every facility in that industry. We note that the Center also raised this specific issue in State court litigation on Rule 4570. The courts found for the District

[19] SJVAPCD, "Final Draft Staff Report Proposed Rule 4570 (Confined Animal Facilities)," June 15, 2006.

on this issue. See *Association of Irritated Residents* v. *SJVAPCD* (2008), 168 Cal. App. 4th 535, 553–554.

III. Approval Status of Rules

The demonstration of attainment in the 2004 SIP and 2008 Clarifications relied on emission reductions from a number of District and State rules. EPA has now taken final action to approve each of these rules into the California 1-hour ozone SIP as shown in Table 1 below for the District rules and discussed below for the State rules.

TABLE 1—APPROVAL STATUS OF SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT RULES RELIED ON IN THE 1-HOUR OZONE STANDARD ATTAINMENT DEMONSTRATION

NO_X controls		
Rule #, description and commitment ID from 2004 SIP	Achieved emission reductions (2010-tpd)	Approval cite/date
9310 Fleet School buses (C)	0.6	NFR signed 12/11/2009.
4307 Small Boilers (2–5 MMBTU) (E)	5.1	72 FR 29887 (5/30/07).
4702 Stat. IC engines (H)	16.8	73 FR 1819 (1/10/08).
4309 Commercial Dryers (I)	0.7	72 FR 29887 (5/30/07).
4308 Water Heaters 0.075 (N)	0.8	72 FR 29887 (5/30/07).
4103 Open Burning (Q)	1.7	74 FR 57907(11/10/09).
4703 Sta. Gas Turbines (S)	1.9	74 FR 53888 (10/21/09).
NO_X Totals	27.6	

VOC controls		
Rule # and description	Achieved emission reductions (2010-tpd)	Approval cite/date
4409 Oil & Gas Fug. (A)	5.1	71 FR 14653 (3/23/06).
4455 Ref. & Chem. Fug. (B)	0.3	71 FR 14653 (3/23/06).
4612 Automotive Coating (incorporates Rule 4602)(K)	1.0	Final signed 12/3/09.
4570 CAFO Rule (L)	17.7	NFR signed 12/11/09.
4662 Org. Solvent Degreasing (M)		74 FR 37948 (7/30/09).
		74 FR 37948 (7/30/09).
4663 Org. Sol. Cleaning (M)		Final signed 12/3/09.
4603 Metal Parts/Products (M)		Final signed 12/3/09.
4604 Can and Coil Coating (M)		Final signed 12/11/09.
4605 Aerospace Coating (M)		74 FR 52894 (10/15/09).
4606 Wood Products Coating (M)		74 FR 52894 (10/15/09).
4607 Graphic Arts (M)		Final signed 12/3/09.
4612 Automotive Coating (M)	3.1	74 FR 52894 (10/15/09).
4653 Adhesives (M)		Final signed 12/11/09.
4684 Polyester Resin Operations (M).		
4401 Steam-Enhanced Oil-well (O)	0.3	Final signed 12/11/09.
4651 Soil Decontamination (P)	0.0	74 FR 33397 (7/13/09).
4103 Open Burning (Q)	3.9	74 FR 57907 (11/10/09).
4621 & 4624 Gasoline storage & trans. (T & U)	1.9	74 FR 33397 (7/13/09).
VOC Totals	33.3	

The ROP and attainment demonstrations in the 2004 SIP and 2008 Clarifications also relied in part on ARB's consumer product regulations (final approval published at 74 FR 57074 (November 4, 2009)), ARB's reformulated gasoline and diesel fuel regulations (final approval signed December 11, 2009), and State's SmogCheck vehicle inspection and maintenance program (final approval signed December 11, 2009).

IV. Final Actions

For the reasons given in our proposed approvals at 74 FR 33933 and 74 FR 50936, EPA is taking the following actions.

1. EPA is approving pursuant to CAA section 110(k)(3), the following elements of the 2004 SIP and the 2008 Clarifications:

a. The rate of progress demonstration as meeting the requirements of CAA sections 172(c)(2) and 182(c)(2) and 40 CFR 51.905(a)(1)(i) and 51.900(f)(4);

b. the rate-of-progress contingency measures as meeting the requirements of CAA section 172(c)(9) and 182(c)(9);

c. the attainment demonstration as meeting the requirements of 182(c)(2)(A) and 181(a) and 40 CFR 51.905(a)(1)(ii); and

d. the attainment contingency measures as meeting the requirements of CAA section 172(c)(9);

2. EPA is finding pursuant to CAA section 110(k)(3) that the 2004 SIP and the 2008 Clarifications meet the requirements of:

a. CAA section 182(e)(3) and 40 CFR 51.905(a)(1)(i) and 51.900(f)(7) for clean fuel/clean technology for boilers; and

b. CAA section 182(d)(1)(A) and 40 CFR 51.905(a)(1)(i) and 51.900(f)(11) for TCMs sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips.

3. EPA is approving pursuant to CAA section 110(k)(3) section 4.7 in the 2004 SIP and the provisions of the 2003 State

Strategy and ARB Board Resolution 04–29 that relate to aggregate emission reductions in the San Joaquin Valley Air Basin as meeting the requirements of CAA sections 110(a)(2)(A) and 172(c)(6).

4. EPA is approving pursuant to CAA section 110(k)(3), the 2004 SIP, the 2003 State Strategy and the 2008 Clarifications as meeting the RACM (exclusive of RACT) requirements of CAA section 172(c) and 40 CFR 51.905(a)(1)(ii).

5. EPA is approving pursuant to CAA section 110(k)(3), SJVAPCD Rule 9310 School Bus Fleets (adopted September 21, 2006) into the San Joaquin Valley portion of the California SIP.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 7, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: December 11, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(317)(i)(B), (c)(339)(i)(B), (c)(339)(ii)(C), (c)(348)(i)(A)(2), (c)(369), (c)(370), and (c)(371) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(317) * * *

(i) * * *

(B) State of California Air Resources Board.

(*1*) Executive Order G–125–304 "Adoption and Submittal of New State Commitments for the San Joaquin Valley" with Appendix A. Commitment to achieve additional emissions reductions in the San Joaquin Valley Air Basin of 10 tons per day (tpd) of nitrogen oxides and 0.5 tpd of direct PM10 by 2010 as given on page 4 of Executive Order G–125–304, executed August 19, 2003, and on page 5 of Appendix A ("State of California Air Resources Board, Resolution No. 03–14, June 26, 2003") to E.O. G–125–304.

* * * * *

(339) * * *

(i) * * *

(B) State of California Air Resources Board.

(*1*) "Revised Proposed 2003 State and Federal Strategy for the California State Implementation Plan," (release date August 25, 2003), section I.D.2. "2003 San Joaquin Valley Particulate Matter State Implementation Plan" (pp. I–23 through I–25) which was adopted without revision to section I.D.2. on October 23, 2003 by ARB Resolution No. 03–22.

(ii) * * *

(C) State of California Air Resources Board.

(*1*) "Revised Proposed 2003 State and Federal Strategy for the California State Implementation Plan," (release date August 25, 2003) as revised by ARB Resolution No. 03–22 (October 23, 2003) excluding for section I.D.2.

(2) ARB Resolution No. 03–22 (October 23, 2003).

* * * * *

(348) * * *

(i) * * *

(A) * * *

(*2*) Rule 9310, "School Bus Fleets," adopted on September 21, 2006.

* * * * *

(369) New and amended plans were submitted on November 15, 2004 by the Governor's designee.

(i) Incorporation by reference.

(A) State of California Air Resources Board.

(*1*) ARB Resolution No. 04–29. Commitment to achieve additional emission reductions in the San Joaquin Valley Air Basin of 10 tons per day (tpd) of nitrogen oxides and 15 tpd of volatile organic compounds by 2010 as described on page 5 of Resolution No. 04–29 October 28, 2004 and page 29 of "Staff Report, Proposed 2004 State Implementation Plan for Ozone in the San Joaquin Valley, release date September 28, 2004."

(ii) Additional Material.

(A) San Joaquin Valley Air Pollution Control District.

(*1*) Extreme Ozone Attainment Demonstration Plan, as adopted by the SJVAPCD on October 8, 2004 and by the California Air Resource Board on October 28, 2005.

(370) An amended plan was submitted on March 6, 2006 by the Governor's designee.

(i) [Reserved]

(ii) Additional Material.

(A) San Joaquin Valley Air Pollution Control District.

(*1*) Amendments to the 2004 Extreme Ozone Attainment Demonstration Plan adopted by the SJVAPCD on October 20, 2005 and by CARB on March 3, 2006.

(B) State of California Air Resources Board.

(*1*) Executive Order G–126–336, dated March 3, 2005 (year is correctly 2006).

(371) An amended plan was submitted on September 8, 2008 by the Governor's designee.

(i) [Reserved]

(ii) Additional Material.

(A) San Joaquin Valley Air Pollution Control District.

(*1*) "Clarifications Regarding the 2004 Extreme Ozone Attainment Demonstration Plan for the Revoked Federal 1-hr Ozone Standard" adopted by the SJVAPCD on August 31, 2008 and by CARB on September 5, 2008.

(B) State of California Air Resources Board.

(*1*) Executive Order S–08–012, "Approval and Submittal of Amendments to the 2004 San Joaquin Valley 1-hour Ozone Attainment Plan," dated September 5, 2008.

[FR Doc. 2010–4752 Filed 3–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 450

[EPA–HQ–OW–2008–0465; FRL–9118–7]

RIN 2040–AE91

Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) is correcting a date in a final rule that appeared in the **Federal Register** on December 1, 2009, 74 FR 62995, due to a date calculation error. The final rule established Clean Water Act technology-based Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development point source category.

DATES: Effective on March 8, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse W. Pritts at 202–566–1038 (*pritts.jesse@epa.gov*).

SUPPLEMENTARY INFORMATION:

Correction of Final Rule

The Environmental Protection Agency is correcting a final rule that appeared in the **Federal Register** on Tuesday, December 1, 2009. 74 FR 62995. The final rule established Clean Water Act technology-based Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development (C&D) point source category. The final C&D rule as signed by the Administrator on November 29, 2009 and posted, pre-publication, on *http://www.epa.gov* set an applicable date for the numeric effluent limitation and associated monitoring requirements for sites that disturb 20 or more acres of land at one time for 20 months from the publication of the rule in the **Federal Register.** That date was expressed as a calculation: "20 months after the date of publication of the final rule" or (in other places) "18 months after the effective date of the rule." The date would be the same under either calculation, because the effective date of the rule was two months after publication. That date is indicated in several locations throughout the preamble of the final rule. *See e.g.,* 74 FR 63050. A member of the public reading the preamble and regulatory text of the final rule as sent to the Office of the Federal Register (OFR) for publication and published on EPA's Web site would easily be able to calculate the date intended by this rule and would certainly understand that compliance with the numeric effluent limitation and associated monitoring requirements would be required later than 2010.

The rule was effective on February 1, 2010. Calculated correctly, this means that August 1, 2011, is the date by which discharges from construction sites that disturb 20 or more acres of land at one time must comply with the numeric effluent limitation and monitoring requirements.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary and contrary to public interest.

Related Acts of Congress, Executive Orders and Agency Initiatives

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, 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 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084. 63 FR 27655 (May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. 64 FR 43255 (August 10, 1999). This rule also is not subject to Executive Order 13045, 62 FR 19885 (April 23, 1997), because it is not economically significant.

This technical correction action 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, do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898, 59 FR 7629 (February 16, 1994). 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, as required by section 3 of Executive Order 12988, 61 FR 4729 (February 7, 1996). EPA has complied with Executive Order 12630, 53 FR 8859 (March 15, 1988), by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. 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.* EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the December 1, 2009 **Federal Register** notice. 74 FR 62995.

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 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 8, 2010. The effective date of today's correction is earlier than 30 days after publication. EPA finds that the earlier effective date clarifies the applicability date of the numeric effluent limit and associated monitoring requirements for sites that disturb 20 or more acres of land at one time for all stakeholders. Today's amendment eliminates an inconsistency and thus, reduces the opportunity for confusion. Any additional delay in correcting the error would only increase the potential confusion. Thus, EPA sets an effective date to make the correction immediately effective. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 450

Environmental protection, Construction industry, Land development, Erosion, Sediment, Stormwater, Water pollution control.

Dated: March 1, 2010.

Peter S. Silva,

Assistant Administrator for Water.

■ Accordingly, 40 CFR Part 450 is corrected by making the following correcting amendments:

PART 450—CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY

■ 1. The authority citation for part 450 continues to read as follows:

Authority: 42 U.S.C. 101, 301, 304, 306, 308, 401, 402, 501 and 510.

■ 2. Revise the introductory text of paragraph (a) of § 450.22 to read as follows:

§ 450.22 Effluent limitations reflecting the best available technology economically achievable (BAT).

* * * * *

(a) Beginning no later than August 1, 2011 during construction activity that disturbs 20 or more acres of land at one time, including non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development or sale; and no later than February 2, 2014 during construction activity that disturbs ten or more acres of land area at one time, including non-contiguous land disturbances that take place at the same time and are part of a larger common plan of development or sale, the following requirements apply:

* * * * *

[FR Doc. 2010–4823 Filed 3–5–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 03–108; FCC 10–12]

Cognitive Radio Technologies and Software Defined Radios

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses a petition for reconsideration filed by the SDR Forum requesting that the Commission modify the policy statements it made in the *Memorandum Opinion and Order (MO&O)* in this proceeding concerning the use of open source software to implement security features in software defined radios (SDRs). While, the Commission dismisses this petition on procedural grounds, it also provides clarification concerning the issues raised therein.

DATES: Effective April 7, 2010.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Policy and Rules Division, Office of Engineering and Technology, (202) 418–7506, e-mail: *Hugh.VanTuyl@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order,* ET Docket No. 03–108, adopted January 14, 2010, and released January 19, 2010. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Summary of the Memorandum Opinion and Order

1. On March 17, 2005, the Commission adopted the *Cognitive Radio Report and Order,* 70 FR 23032, May 4, 2005, in which the rules were modified to reflect ongoing technical developments in cognitive and software defined radio (SDR) technologies.

2. On April 20, 2007, the Commission adopted a *Memorandum Opinion and Order* (MO&O), 72 FR 31190, June 6, 2007, which responded to two petitions filed in response to the *Cognitive Radio Report and Order.* The Commission,

inter alia, granted a petition for clarification filed by Cisco Systems, Inc. ("Cisco") requesting that the Commission clarify: (1) The requirement to approve certain devices as software defined radios; and (2) its policy on the confidentiality of software that controls security measures in software defined radios.

3. In responding to the Cisco petition, the Commission stated that with regard to the use of open source software for implementing software defined radio security measures:

> "* * * manufacturers should not intentionally make the distinctive elements that implement that manufacturer's particular security measures in a software defined radio public, if doing so would increase the risk that these security measures could be defeated or otherwise circumvented to allow operation of the radio in a manner that violates the Commission's rules. A system that is wholly dependent on open source elements will have a high burden to demonstrate that it is sufficiently secure to warrant authorization as a software defined radio."

4. The SDR Forum filed a petition for reconsideration on July 3, 2007, requesting that the Commission modify the statements.

5. In its petition, the SDR Forum expresses concern that the language in the *MO&O* on the use of open source software for implementing SDR security measures may inadvertently pose a barrier to the development and wide implementation of security techniques that would ensure compliance with the Commission's rules. SDR recommends that these policy statements be modified, stating that manufacturers should have the discretion to discuss their security measures in public so long as the intent of the disclosure is not to enable circumvention of the Commission's rules. The SDR Forum states that the Commission should remain neutral on the security of open source elements because open source approaches are no less secure than proprietary techniques. It specifically requests that the Commission modify the text quoted above by:

> "revising the first sentence to state "a manufacturer may make public its SDR security mechanisms so long as the intent is not to circumvent compliance with Commission rules;" and by deleting the second sentence."

6. The Commission is dismissing the SDR Forum petition for reconsideration on procedural grounds. While the SDR Forum filed comments in response to the *NPRM* in this proceeding, it did not submit comments in response to the Cisco petition for reconsideration that raised the issue of using open source software to implement software defined radio security mechanisms. The Cisco petition was addressed in the Commission's *MO&O* for which the SDR Forum now requests reconsideration. A petition for reconsideration that relies on facts not previously presented to the Commission will be granted only if:

(a) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;

(b) The facts relied upon were unknown to the petitioner until after his last opportunity to present them to the Commission, and the petition could not through the exercise of due diligence have learned of the facts in question prior to such opportunity; or

(c) The Commission determines that consideration of the facts relied on is required in the public interest.

The SDR Forum petition does not address why it did not respond to the Cisco petition or claim that any of these three conditions are met in this case. Accordingly, the SDR Forum's petition for reconsideration is procedurally defective and is hereby dismissed. However, the Commission recognizes that the issue of open source software in software defined radios is of interest to the SDR Forum and other parties. Accordingly, the Commission is taking this opportunity to clarify its policies with respect to the use of open source software for implementing security features in software defined radios.

7. The Commission's rules require that a software defined radio manufacturer take steps to ensure that only software that has been approved with a software defined radio can be loaded into the radio. The software must not allow the user to operate the transmitter with radio frequency parameters other than those that were approved by the Commission. The Commission's rules require that the manufacturer have reasonable security measures to prevent unauthorized modifications that would affect the RF operating parameters or the circumstances under which the transmitter operates in accordance with Commission rules. Manufacturers may select the methods used to meet these requirements and must describe them in their application for equipment authorization.

8. When a party applies for certification of a software defined radio, the description of the security methods used in the radio is automatically held confidential. The Commission does this because such information often is proprietary and also because revelation of the security methods, or portions thereof, could possibly assist parties in defeating the security features and enable operation of the radio outside the Commission's rules. Out of an abundance of caution—because operation of a radio outside the Commission's rules could result in harmful interference to a wide variety of radio services, including safety-of-life services—the Commission holds the entire description of the security measures confidential. Therefore, the Commission's staff does not have to determine which portions of a software defined radio security methods description filed with an application could be made publicly available without risk that such disclosure could assist parties in defeating the security measures. Further, by automatically holding the description confidential, applicants for certification do not have to specifically request confidentiality for the description of a radio's security mechanisms.

9. Neither the Commission's rules whereby it maintains the confidentiality of a software defined radio's security mechanism nor the policy stated in the *MO&O* prohibit radio manufacturers and software developers from sharing information on the design of security methods with other manufacturers and developers. Rather, the Commission's policy stated only that manufacturers should not make the "distinctive elements" of security features publicly available, if doing so would increase the risk that security measures could be defeated or circumvented to allow operation of a radio in a manner that violates the rules. The Commission's intent was not to prohibit manufacturers from collaborating and sharing information that could allow them to develop more robust security features or reduce the cost of implementing them. In fact, the Commission would encourage such work by industry. The Commission's concern is only with disclosure of those particular elements of a security scheme when such disclosure could facilitate defeating the security scheme. Thus, manufacturers can make whatever information they wish concerning their security methods public, provided they can demonstrate the implementation has a means of controlling access to the distinctive elements that could allow parties to defeat or circumvent the security methods.

10. The Commission emphasizes that it does not prohibit the use of open source software in implementing software defined radio security features. The Commission's concern with open source software is that disclosure of

certain elements of a security scheme could assist parties in defeating the scheme. As Cisco stated in its petition, licensing agreements may require that open source software code be made publicly available. This could potentially lead to public disclosure of this information. For these reasons, the Commission stated in the *MO&O* that a system that is wholly dependent on open source elements would have a high burden to demonstrate that it is sufficiently secure to warrant authorization as a software defined radio. However, the Commission's statements in the *MO&O* were not intended to prohibit the use of open source software or discourage its use. All applicants seeking to certify a software defined radio are held to the same standard, *i.e.*, they must demonstrate that the radio contains security features sufficient to prevent unauthorized modifications to the radio frequency operating parameter. A party applying for certification of a software defined radio would need to show that public disclosure of the source code would not assist parties in defeating the security scheme, or that disclosure of the distinctive elements of the security scheme would not assist parties in defeating the security scheme. As the SDR Forum notes, security mechanisms can rely on a variety of means to control access, such as keys, passwords or biometric data.

11. Finally, as software defined radio and security technologies continue to develop and mature, the Commission may address the rules for software defined radios, including their security requirements, in future proceedings. The Commission encourages the SDR Forum and other interested parties to participate in such proceedings.

Ordering Clauses

12. The petition for reconsideration filed by the SDR Forum IS *hereby dismissed*. This action is taken pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), and 303(r).

13. *It is further ordered* that ET Docket No. 03–108 *is terminated*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–4855 Filed 3–5–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XU89

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allocation of the 2010 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 3, 2010, through 1200 hrs, A.l.t., September 1, 2010.

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

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

The A season allocation of the 2010 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA is 1,246 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2010) and inseason adjustment (74 FR 68713, December 29, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allocation of the 2010 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,096 mt, and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 2, 2010.

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

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

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

Dated: March 3, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–4857 Filed 3–3–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 44
Monday, March 8, 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 923

[Doc. No. AMS–FV–09–0033; FV09–923–1 PR]

Sweet Cherries Grown in Designated Counties in Washington; Change in the Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on proposed changes to the handling regulation currently prescribed for cherries under the Washington cherry marketing order. The marketing order regulates the handling of sweet cherries grown in designated counties in Washington and is administered locally by the Washington Cherry Marketing Committee (Committee). This rule would add quality and pack requirements for Rainier cherries and other lightly colored sweet cherry varieties that are designated as "premium" when handled. This change is expected to reduce market confusion regarding the marketing of such cherries; improve producer returns by providing pack differentiation; and benefit producers, handlers, and consumers.

DATES: Comments must be received by May 7, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Fax:* (202) 720–8938; or *Internet: http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *E-mail: Robert.Curry@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 923, both as amended (7 CFR part 923), regulating the handling of cherries grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on proposed changes to the handling regulation currently prescribed for cherries under the order. Specifically, this rule would add minimum requirements for Rainier cherries and other lightly-colored sweet cherry varieties that are designated as "premium" when marketed. Under this proposal, such Rainier cherries or other varieties of lightly colored sweet cherries must be packed so that at least 90 percent, by count, of the cherries in any lot shall measure not less than 64/64-inch (10½-row) in diameter and not more than 5 percent, by count, may be less than 61/64-inch (11-row) in diameter. In addition, 90 percent, by count, of the cherries in any lot must exhibit a pink-to-red surface blush. For any given sample, not more than 20 percent of the cherries shall be absent a pink-to-red surface blush.

This change would help reduce market confusion and improve producer returns by providing pack differentiation and is expected to benefit producers, handlers, and consumers.

Section 923.52 of the order authorizes the establishment of grade, size, quality, maturity, pack and container regulations for any variety or varieties of cherries grown in the production area. Section 923.53 further authorizes the modification, suspension, or termination of regulations issued under § 923.52. Section 923.55 provides that whenever cherries are regulated pursuant to § 923.52 or § 923.53, such cherries must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Section 923.322 of the order's rules and regulations currently provide grade, size, maturity, and pack regulations for Washington grown sweet cherries. Rainier cherries and other lightly-colored sweet cherry varieties have variety-specific minimum size and maturity requirements as well as the same pack requirements as all Washington sweet cherries, but do not

share the minimum grade requirements with dark colored cherries.

As just stated, Rainier cherries and other lightly- colored sweet cherry varieties have certain current mandatory grading requirements, including a minimum maturity requirement of 17 percent soluble solids and a minimum size requirement of 61/64-inch diameter (11-row) as provided in section 923.322(c). However, lightly-colored varieties are not currently required to meet a minimum grade or pack standard. As a consequence, the cherry industry markets several different qualities or packs of lightly colored sweet cherries without the benefit of any clear differentiation between competing products. This lack of differentiation in the marketing of lightly-colored sweet cherries has led to market confusion and downward pricing pressure in recent years.

The worldwide retail trade is currently demanding a consistently large lightly-colored sweet cherry that arrives with a pink to red blush on its external surface. Likewise, the retail trade is willing to pay a premium price for large lightly-colored sweet cherries that consistently exhibit this surface blush. Conversely, the market for lightly-colored sweet cherries without a blush—cherries pure yellow in color—is decreasing and this sub-group of cherries is generally sold at a lower market price. Within the order's existing handling regulation, there is no clear articulation of a "premium" designation within the lightly-colored cherry category and buyers have used the price of the packs containing all-yellow cherries to put downward pricing pressure on cherries that have been produced with the preferred pink-to-red blush.

With this proposed change, industry handlers would be able to differentiate packs of lightly colored cherries and the price point that comes with producing a superior sweet cherry. It is also expected that the change would add further incentive to produce superior quality sweet cherries and strengthen the producer's position in the marketplace.

This rule would require any regulated handler handling cherries with the "premium" designation to adhere to the new requirements as provided in new section 923.322(e). All cherries not so designated would continue to be allowed to be marketed without regard to the new requirements. Notwithstanding, all sweet cherries must continue to meet the other minimum requirements of the order and regulations.

Conforming changes would be made to § 923.322 to reflect the addition of the new requirements. The existing paragraph (e) would be redesignated as paragraph (d), and the introductory sentence of paragraph (g) would be revised to reference the new paragraph (e).

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 44 handlers of Washington sweet cherries subject to regulation under the marketing order and approximately 1,500 cherry producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the 2005–2007 three-year average fresh cherry utilization of 121,666 tons and average fresh cherry producer price of $2,400 per ton as reported by the National Agricultural Statistics Service, USDA, and 1,500 Washington cherry producers, the recent three-year average annual producer revenue was approximately $194,666. In addition, the Committee reports that none of the 44 handlers have annual receipts of over $7,000,000. Based on this information, the majority of Washington sweet cherry producers and handlers may be classified as small entities.

Utilizing authority contained in sections 923.52, 923.53, and 923.55, the Committee recommended that a definition for premium packed lightly-colored sweet cherries be added to section 923.322(h) in the order's handling regulation to identify the minimum size and color requirements that a premium packed cherry must meet. In addition, to help stabilize the downwards pricing pressure that varying unmarked grades have on the market, the Committee recommended adding a new paragraph 923.322(e)(3) to this subpart establishing a requirement that all cherries packed in containers marked "premium" must adhere to the definition.

USDA subsequently determined that, rather than adding a new definition, it would be more appropriate to add minimum requirements for cherries that are designated as "premium" to section 923.322 of the handling regulation.

The Committee reports that cherry size and quality are important to buyers. Consistency and dependability are equally important. In recent seasons, there has not been marketing consistency in the quality and size of lightly-colored cherries. This has resulted in a downwards pricing pressure on all cherries, regardless of the quality, color, and size of the fruit packed.

Cherry size is related to maturity and other quality factors. That is, larger sized cherries tend to be sweeter and of higher overall quality, and thus generally provide higher prices for the producer. Although AMS Market News Service data is not reported for Rainier cherries smaller than 10½-row (1-inch diameter), this correlation is supported by prices received for Bing cherries of various sizes. For example, the Market News Service reported f.o.b. prices for 12-row sized Bing cherries (54/64 inch diameter) of $24.00 per carton in late June 2007. Concurrently. 10½-row size Bing cherries were selling for $35.00 to $36.00 per carton (10½-row Rainier cherries were being quoted by Market News at $35.00 to $40.00 per carton in late June 2007). This price relationship generally holds steady throughout each season. Furthermore, market research by the Washington cherry industry shows that larger sizes correlate with higher maturity levels, and that larger sizes are preferred by cherry consumers.

Although research showing a correlation between the flavor of lightly-colored sweet cherry varieties and the degree of reddish blush is lacking, actual market experience has shown the industry that a definite price correlation exists according to remarks made at the recent Committee meeting. This is largely due to consumer preference for lightly colored cherries that exhibit a reddish blush.

The Committee believes that this change would not have a negative impact economically on either small or large handlers or producers. Comments received at the May 14, 2009, meeting indicate that the majority of the Washington sweet cherry industry is already packing to such standards or better. Comments also indicate that it is

relatively easy to produce lightly-colored sweet cherries with a pink to reddish surface blush, since the added color is related to the amount of direct sunlight available to the fruit. Pruning and other common cultural practices can greatly affect the amount of blush on the cherries. Finally, since this change is only required should a handler choose to pack and mark lightly-colored cherries to the "premium" standard, any additional costs can be eliminated by the handler.

The Committee discussed alternatives to the recommended action. The most significant alternative would have been a recommendation that mandated a minimum percentage of reddish color on lightly colored sweet cherries, as well as a mandatory increase in the minimum size (currently 11-row size or 61/64 minimum diameter). There were other various options briefly discussed under this alternative related to sizing and the actual degree of blush. Comments from many of those attending the May 14th meeting indicated that a mandatory change in size and pack requirements would not be well received by the industry at this time, and that the less restrictive recommendation subsequently made should adequately solve the current marketing problem.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large sweet cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

Further, the Committee meeting was widely publicized throughout the Washington cherry industry and all interested persons were invited to attend the meeting and participate in the deliberations. Like all Committee meetings, the May 14, 2009, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 923 is proposed to be amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 923.322 [Amended]

2. In § 923.322, redesignate paragraph (e) as paragraph (d), add a new paragraph (e), and revise the introductory sentence of paragraph (g) to read as follows:

§ 923.322 Washington cherry handling regulation.

* * * * *

(e) *Light sweet cherries marked as premium.* No handler shall handle, except as otherwise provided in this section, any package or container of Rainier cherries or other varieties of lightly colored sweet cherries marked as *premium* except in accordance with the following:

(1) *Quality.* 90 percent, by count, of such cherries in any lot must exhibit a pink-to-red surface blush and, for any given sample, not more than 20 percent of the cherries shall be absent a pink-to-red surface blush.

(2) *Pack.* At least 90 percent, by count, of the cherries in any lot shall measure not less than 64/64-inch (10½-row) in diameter and not more than 5 percent, by count, may be less than 61/64-inch (11-row) in diameter.

* * * * *

(g) *Exceptions.* Any individual shipment of cherries which meets each of the following requirements may be handled without regard to the provisions of paragraphs (a), (b), (c), (d), and (e) of this section, and of §§ 923.41 and 923.55.

* * * * *

Dated: February 25, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–4341 Filed 3–5–10; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–14; NRC–2009–0493]

Nuclear Energy Institute; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM) submitted by the Nuclear Energy Institute (NEI) (the petitioner). The petitioner requested that the NRC amend the compliance date for specific requirements in the NRC's regulations. The NRC decided to deny PRM–73–14 for the reasons stated in this document.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Federal Rulemaking Web site: Supporting materials related to this petition for rulemaking can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0493. Address questions about NRC dockets to Carol

Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone: 301–415–1462* or *e-mail: Timothy.Reed@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

In a letter to Chairman Gregory B. Jaczko dated September 25, 2009, NEI, the petitioner, requested that the NRC undertake an expedited rulemaking to revise the compliance date for specific requirements within Title 10 of the *Code of Federal Regulations* (10 CFR) 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage." The NRC reviewed the request for rulemaking and determined that the request met the minimum sufficiency requirements of 10 CFR 2.802, "Petition for Rulemaking" and, therefore, was considered as a petition for rulemaking. Accordingly, the NRC docketed the request as PRM–73–14 and notified the petitioner of this decision by letter dated October 1, 2009. Due to the exigent circumstances associated with the request, the NRC did not prepare a notice of receipt and request for comment, and instead gave immediate consideration to the request, convening a petition review board (PRB) on November 9, 2009.

The petitioner requested the NRC amend its regulations to change the compliance date for specific requirements of 10 CFR part 73 to December 31, 2010, based on the results of an industry survey conducted by NEI. The petitioner states that 24 sites will seek schedular exemption requests from the March 31, 2010 compliance date, and 9 more sites are evaluating the need for exemptions. The petitioner states that two provisions of the new Power Reactor Security rule, namely 10 CFR 73.55(e) "Physical barriers" and 10 CFR 73.55(i) "Detection and assessment systems" will be the subject of nearly all the exemption requests.

In support of this request the petitioner notes that the subject provisions of 10 CFR 73.55 are problematic because these provisions may require physical modifications to the plant and involve engineering analysis, design, equipment procurement, installation, testing, and related training. The petitioner indicates that absent a rule change to modify the implementation date, both NRC and industry would be required to divert vast resources to review and approve exemption requests for potentially more than half of the power reactor sites. The petitioner states that these same resources are needed to finalize the remaining regulatory guidance for implementation of the new Power Reactor Security rulemaking.

The petitioner states that the nuclear energy industry has fully implemented numerous new security provisions and enhancements since the terrorist attacks of September 11, 2001, including NRC orders, an enhanced design basis threat, and numerous threat advisories. Additionally, the petitioner notes that NRC has conducted baseline inspections of industry actions to address large fires and explosions, and has evaluated force-on-force exercises for the past 7 years. The petitioner states that industry has been proactive in many initiatives that strengthen nuclear power reactor security. These initiatives were undertaken with the U.S. Department of Homeland Security, the Federal Bureau of Investigation, and local law enforcement authorities. Finally, the petitioner notes that all these activities have resulted in nuclear power plants being recognized as the most protected and secure of domestic private industrial facilities.

NRC Evaluation

The NRC reviewed the petition and reached the following conclusions:

- Revising the compliance date established by the final Power Reactor Security rulemaking would require the NRC to undertake a notice and comment rulemaking.
- The data contained in PRM–73–14 does not provide enough information to currently support the NRC assembling a proposed rule that would contain a sufficiently robust regulatory basis.
- The NRC would need to interact with external stakeholders to develop the additional supporting information necessary for completing an adequate notice and comment rulemaking.
- There is not sufficient time, before the new Power Reactor Security rule compliance date of March 31, 2010, to allow the NRC to collect and analyze the necessary data and complete an adequate notice and comment rulemaking. This is due, in part, to statutory rulemaking process requirements under the Administrative Procedure Act (i.e., development, approval, and issuance of a proposed rule; adequate public comment period; processing and analysis of stakeholder comments; development, approval, and issuance of a final rule; approval of the final rule by OMB if there are paperwork provisions).
- If the NRC were to pursue a more narrow revision to the compliance provisions of 10 CFR 73.55, this rule would require the NRC to tailor rule provisions to specific facilities and situations. Developing this more complex and specific compliance language with the supporting regulatory basis would, at a minimum, require additional interactions with external stakeholders.
- Revising the 10 CFR 73.55 compliance date is an overly broad solution to the petitioner's problem. A revision to the compliance date would relieve all power reactor licensees from implementing all the new requirements by March 31, 2010. However, it is clear that according to the data provided by the petitioner, that fewer than half of the licensees intend to request relief, and the requirements in the new rule that seem particularly problematic represent a very small percentage of the total number of requirements in the rule. Under such circumstances, the exemption process appears to be the best regulatory tool to address the situation. The staff is currently addressing this potential license compliance issue through review of scheduler exemptions.

Public Comments on the Petition

Due to the exigent circumstances associated with the request, the NRC did not prepare a notice of receipt and request for comment, and instead gave immediate consideration to the request. Accordingly, there are no public comments on this petition.

Determination of Petition

For reasons cited above, the NRC is denying PRM–73–14.

Dated at Rockville, Maryland, this 2nd of March 2010.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010–4827 Filed 3–5–10; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 906

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1207

RIN 2590–AA28

Minority and Women Inclusion

AGENCIES: Federal Housing Finance Board; Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing notice and opportunity for the public to comment on this proposed rule on minority and women inclusion. Section 1116 of the Housing and Economic Recovery Act of 2008 amended section 1319A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, requiring FHFA, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks to promote diversity and the inclusion of women and minorities in all activities. Consequently, FHFA published a proposed rule for comment on January 11, 2010, which was intended to achieve that end. The proposal had a comment period of 60 days, but FHFA has decided to extend the comment period an additional 45 days.

DATES: Written comments on the proposed rule must be received on or before April 26, 2010. For additional information, *see* **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Submit comments to FHFA by any one of the following methods:

- *E-mail: RegComments@fhfa.gov.* Please include in the subject line of your submission: "Federal Housing Finance Agency—Proposed Rule: RIN 2590–AA28".
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. To ensure timely receipt by the agency include the following information in the subject line of your submission: "Federal Housing Finance Agency—Proposed Rule: RIN 2590–AA28". If you submit your comment to the *Federal eRulemaking Portal*, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Alfred M. Pollard, General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552, *Attention:* Public Comments/RIN 2590–AA28. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Equal Employment Opportunity and Diversity Director, *Eric.Howard@fhfa.gov,* (202) 408–2502, 1625 Eye Street, NW., Washington, DC 20006; or Mark Laponsky, Deputy General Counsel, *Mark.Laponsky@fhfa.gov*, (202) 414–3832 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION: On January 11, 2010, FHFA published for comment in the **Federal Register** a proposed rule, in accordance with statutory amendments, to require FHFA, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks to promote diversity and the inclusion of women and minorities in all activities. The proposed rule will implement this statutory provision. *See* 75 FR 1289 (January 11, 2010). The comment period for the proposed rule was originally scheduled to close on March 12, 2010; but, FHFA wants to ensure that interested parties have sufficient opportunity to submit thoughtful and considered comments on the important policy and operational issues addressed in the proposed rule. As a result, FHFA is extending the comment period an additional 45 days, until April 26, 2010.

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing the final regulation. We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

Dated: February 28, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–4768 Filed 3–5–10; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0050]

RIN 1625–AA87

Security Zone; Potomac River, Washington Channel, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary security zone in certain waters of Washington Channel on the Potomac River. The security zone is necessary to provide for the security and safety of life and property of event participants, spectators and mariners during the U.S. Coast Guard Commandant's Change of Command ceremony from 6 a.m. through 5 p.m. on May 25, 2010. Entry into this zone is prohibited unless authorized by the Captain of the Port, Baltimore, Maryland, or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before April 7, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0050 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V.

Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0050), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0050" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0050" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard will conduct a Change of Command ceremony at Fort McNair in Washington, DC. To address security concerns during the event, the Captain of the Port, Baltimore, Maryland proposes to establish a security zone upon certain waters of the Washington Channel. This proposed security zone will help the Coast Guard to prevent vessels or persons from engaging in waterborne terrorist actions during the U.S. Coast Guard Commandant's Change of Command ceremony. Due to the catastrophic impact a terrorist attack during the ceremony would have against the large number of dignitaries, and the surrounding area and communities, a security zone is prudent for this type of event.

Discussion of Proposed Rule

On Tuesday, May 25, 2010, the U.S. Coast Guard Commandant's Change of Command ceremony will be held at Fort Lesley J. McNair, in Washington, DC. The event will consist of several high-ranking dignitaries and a background comprised of U.S. Coast Guard vessels anchored adjacent to Fort McNair on the confined waters of the Washington Channel on the Potomac River. Due to the need to safeguard event participants and prevent vessels or persons from approaching Fort McNair and thereby bypassing the security measures established on shore during the event, vessel traffic will be restricted on certain waters of the Washington Channel.

The Captain of the Port Baltimore, Maryland, is proposing to establish a security zone from 6 a.m. through 5 p.m. on May 25, 2010. U.S. Coast Guard patrol vessels will be provided to prevent the movement of persons and vessels in an area approximately 200 yards wide and 450 yards long within Washington Channel. The proposed regulated area is adjacent to Fort McNair and includes all waters of the Washington Channel, from shoreline to shoreline, bounded on the north along latitude 38°52′03″ N and bounded on the south along latitude 38°51′50″ N.

Vessels underway at the time this security zone is implemented would be required to immediately proceed out of the zone. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative. The Captain of the Port will issue Broadcast Notices to Mariners to publicize the security zone and notify the public of changes in the status of the zone. Such notices will continue until the ceremony is complete.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this security zone restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or transit through or within the security zone during the enforcement period. The security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The security zone is of limited size and duration. Although the security zone will apply to the entire width of the channel, maritime advisories will be widely available to the maritime community before the effective period.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Ronald L. Houck, Coast Guard Sector Baltimore, Waterways Management Division, at telephone number 410–576–2674. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary security zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

We seek any comments or information that may lead to the discovery of a

significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposed to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–0050 to read as follows:

§ 165.T05–0050 Security Zone; Potomac River, Washington Channel, Washington, DC.

(a) *Location.* The following area is a security zone: all waters of the Washington Channel, from shoreline to shoreline, bounded on the north along latitude 38°52′03″ N and bounded on the south along latitude 38°51′50″ N (North American Datum 1983).

(b) *Definitions.* As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the security zone described in paragraph (a) of this section.

(c) *Regulations.* (1) The general security zone regulations found in 33 CFR 165.33 apply to the security zone created by this temporary section, § 165.T05–0050.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the security zone is implemented do not have to depart the security zone. All vessels underway within this security zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the security zone must first request authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 6 a.m. through 5 p.m. on May 25, 2010.

Dated: February 24, 2010.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore Maryland.

[FR Doc. 2010–4808 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0850; FRL–9123–9]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Chapter 116 Which Relate to the Application Review Schedule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas to EPA on September 25, 2003 and January 24, 2008. The portions of the SIP revisions proposed today address requirements found under Title 30 in the Texas Administrative Code (TAC), Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, Section 114—Application Review Schedule. The proposed revisions; amends the requirements related to the voiding of a permit or permit amendment; and implements the requirements of House Bill 3732, 80th Legislature (2007), and the Texas Health and Safety Code, section 382.0566, concerning specific deadlines for review and issuance of air quality permits for Advanced Clean Energy Projects (ACEP). EPA has determined that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Act.

DATES: Comments must be received on or before April 7, 2010.

ADDRESSES: Comments may be mailed to Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposal, please contact Ms. Melanie Magee (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–7161. Ms. Magee can also be reached via electronic mail at *magee.melanie@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 24, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–4832 Filed 3–5–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100204079–0084–01]

RIN 0648–XQ49

Fisheries of the Northeastern United States; Atlantic Bluefish Fisheries; 2010 Atlantic Bluefish Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2010 Atlantic bluefish fishery, including State-by-State commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the east coast of the United States. The intent of these specifications is to establish the allowable 2010 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the Atlantic Bluefish Fishery Management Plan (FMP).

DATES: Comments must be received on or before March 23, 2010.

ADDRESSES: You may submit comments, identified by 0648–XQ49, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal: *http://www.regulations.gov*,
- *Fax:* (978) 281–9135, *Attn:* Regional Administrator.
- *Mail and Hand Delivery:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2010 Bluefish Specifications."
- *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.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Management Specialist, (978) 281–99257.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the FMP is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160.

The FMP requires the Council to recommend, on an annual basis, a total allowable catch (TAC) and total allowable landings (TAL) that will control fishing mortality. An estimate of annual discards is deducted from the TAC to calculate the TAL that can be made during the year by the commercial and recreational fishing sectors combined. The TAL is composed of a commercial quota (allocated to the States from Maine to Florida in specified shares) and a coastwide recreational harvest limit (RHL). A research set-aside (RSA) quota is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors.

The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee (Monitoring Committee) and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available data, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the Northeast Regional Administrator (RA). Because this FMP is a joint plan, the Commission also meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register.** After considering public comment, NMFS will publish final specifications in the **Federal Register.**

In July 2009, the Monitoring Committee and SSC met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2010. In August 2009, the Council approved the Monitoring Committee and SSC's recommendations, and the Commission's Bluefish Board (Board) adopted complementary management measures.

Proposed Specifications

Updated Model Estimates

According to Amendment 1 to the FMP (Amendment 1), overfishing for bluefish occurs when F exceeds the fishing mortality rate that allows maximum sustainable yield (F_{MSY}), or the maximum F threshold to be achieved. The stock is considered overfished if the biomass (B) falls below the minimum biomass threshold, which is defined as ½ B_{MSY}. Amendment 1 also established that the long-term target F is 90 percent of F_{MSY} (F_{MSY} = 0.19, therefore F_{target} = 90 percent of F_{MSY} = 0.17), and the long-term target B is B_{MSY} = 324 million lb (146,964 mt).

An age-structured assessment program (ASAP) model for bluefish was approved by the 41st Stock Assessment Review Committee (SARC 41) in 2005 to estimate F and annual biomass. In June 2009, the ASAP model was updated in order to estimate the current status of the bluefish stock (*i.e.*, 2008 biomass and F estimates) and enable the Monitoring Committee and SSC to recommend 2010 specifications using landings information and survey indices

through the 2008 fishing year. The results of the assessment update were as follows: (1) An estimated stock biomass for 2008, B_{2008} = 360.957 million lb (163,727 mt); and (2) projected yields for 2010 using $F_{target} = F_{2008} = 0.12$. Based on the updated 2008 estimate of bluefish stock biomass, the bluefish stock is not considered overfished: B_{2008} = 360.957 million lb (163,727 mt) is greater than the minimum biomass threshold, 2 B_{MSY} = 162 million lb (73,526 mt), and is actually above B_{MSY}. Biomass has been above the target since 2007, and the stock was declared rebuilt in 2009, satisfying the rebuilding program requirement to achieve rebuilding by 2010 that was established in Amendment 1. Estimates of F have declined from 0.41 in 1991 to 0.12 in 2008. The updated model results also conclude that the Atlantic bluefish stock is not experiencing overfishing; i.e., the most recent F (F_{2008} = 0.12) is less than the maximum F overfishing threshold specified by SARC 41 (F_{MSY} = 0.19).

2010 TAL

During the rebuilding period, the Council was required to set a TAC consistent with the prescribed F for a given phase in the rebuilding period, or the status quo F, whichever is less. According to Amendment 1, once the stock is recovered, the TAC could be set to achieve an F_{target} defined as 90 percent of F_{MSY} (0.19). An estimate of annual discards is deducted from the TAC to calculate the TAL that can be made during the fishing year by the commercial and recreational fishing sector combined. The TAL is composed of a commercial quota and a RHL.

At its July 2009 meeting, the SSC noted that sparse age composition data, the lack of sampling by fishery independent trawl and seine surveys, and the uncertainty behind recreational catch estimates were sources of scientific uncertainty associated with the bluefish stock assessment. The Monitoring Committee and SSC recommended a TAC for 2010 at a level consistent with the maximum allowable rebuilding fishing mortality rate (F = 0.15), rather than increasing F_{target} to the FMP-prescribed level for a recovered stock (F = 0.17). The Council subsequently approved the Monitoring Committee and SSC's recommendations at its August 2009 meeting. Therefore, the Council recommended a coastwide TAC of 34.376 million lb (15,593 mt) to achieve the target F (0.15) in 2010 and to ensure that the bluefish stock continues to remain above the long-term biomass target, B_{MSY}.

The proposed TAL for 2010 is derived by subtracting an estimate of discards of 5.112 million lb (2,319 mt), the average discard level from 2006–2008, from the TAC. After subtracting estimated discards, the 2010 TAL would be 29.264 million lb (13,274 mt), which is slightly less than the 2009 TAL of 29.356 million lb (13,316 mt) due to an increase in discard estimates in recent years. Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2010 would be 4.975 million lb (2,257 mt) and the RHL would be 24.289 million lb (11,017 mt) in 2010. In addition, up to 3 percent of the TAL may be allocated as RSA quota. The discussion below describes the recommended allocation of TAL between the commercial and recreational sectors, and the proportional adjustments to account for the recommended bluefish RSA quota.

Proposed Commercial Quota and Recreational Harvest Limit

The FMP stipulates that, in any year in which 17 percent of the TAL is less than 10.500 million lb (4,763 mt), the commercial quota may be increased up to 10.500 million lb (4,763 mt) as long as the recreational fishery is not projected to land more than 83 percent of the TAL in the upcoming fishing year, and the combined projected recreational landings and commercial quota would not exceed the TAL. At the Monitoring Committee meeting in July 2009, Council staff attempted to estimate projected recreational landings for the 2010 fishing year by using simple linear regression of the recent (2001–2008) temporal trends in recreational landings. However, at that time, only data through Wave 2 were available, and a reliable estimate of 2009 catch could not be generated. Therefore, the Council postponed this type of projection until more landings data for the 2009 fishing year become available. Recreational landings for 2008 (18.9 million lb, 8,573 mt) were applied to 2010 for calculation of the RHL. As such, it is likely that a transfer of 5.387 million lb to the commercial sector could be approved. This option represents the preferred alternative recommended by the Council in its specifications document.

However, the Council also recognized that future updates of the recreational harvest projections could result in a different transfer amount to the commercial sector in the final specifications. NMFS's Northeast Regional Office (NERO) staff is unable to update the recreational harvest projection at this time because although Marine Recreational Fisheries Statistics Survey (MRFSS) data through Wave 4 of 2009 are available, Wave 5 estimates are delayed. When Wave 5 data become available, NERO staff will update the recreational harvest projection in the final rule for the 2010 bluefish specifications. Depending on the results of the Wave 5 estimates, the actual amount that could be transferred to the commercial sector could be higher or lower than the preferred option of 5.387 million lb.

RSA

A request for research proposals for the 2010 Mid-Atlantic RSA Program was published on January 2, 2009 (74 FR 72). For analysis of impacts for each TAL alternative, the maximum potential RSA amount of 3 percent of the TAL was used. Consistent with the allocation of the maximum bluefish RSA amount, the proposed commercial quota for 2010 would be adjusted to 10.051 million lb (4,559 mt), and the proposed 2010 RHL would be adjusted to 18.355 million lb (8,326 mt). This proposed rule does not represent NOAA's approval of any RSA-related grant award, which will be included in a subsequent action.

Proposed Recreational Possession Limit

The Council recommends, and NMFS proposes, to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL.

Proposed State Commercial Allocations

The proposed State commercial allocations for the recommended 2010 commercial quota are shown in Table 1, based on the percentages specified in the FMP. These quotas do not reflect any adjustments for quota overages that may have occurred in some States in 2009. Any potential deductions for States that exceeded their quota in 2009 will be accounted for in the final rule.

TABLE 1—PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2010

[Including RSA deductions]

State	Percent share	2010 Council-proposed commercial quota (lb)	2010 Council-proposed commercial quota (kg)
ME	0.6685	67,192	30,478
NH	0.4145	41,662	18,898
MA	6.7167	675,105	306,222
RI	6.8081	684,292	310,390
CT	1.2663	127,278	57,732
NY	10.3851	1,043,821	473,469
NJ	14.8162	1,489,197	675,488
DE	1.8782	188,781	85,629
MD	3.0018	301,715	136,856
VA	11.8795	1,194,025	541,601
NC	32.0608	3,222,476	1,461,691
SC	0.0352	3,538	1,605
GA	0.0095	955	433
FL	10.0597	1,011,115	458,634
Total	100.0001	10,051,150	4,559,125

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This action is exempt from review under E.O. 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 preamble and in the **SUMMARY**. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

The total gross revenue for the individual vessels that would be directly regulated by this action is less than $4.0 million for commercial fishing and $6.5 million for recreational fishing activities. All vessels that would be impacted by this proposed rulemaking are therefore considered to be small entities and, thus, there would be no disproportionate impacts between large and small entities as a result of the proposed rule. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for Atlantic bluefish, as well as owners of vessels that fish for Atlantic bluefish in State waters.

The Council estimates that the proposed 2010 specifications could affect approximately 2,217 commercial vessels that actively participated (landed 1 lb (0.45 kg) or more) in the Atlantic bluefish fishery in 2008 (the last year for which there is complete data). The participants in the commercial sector were defined using two sets of data. First, the Northeast dealer reports were used to identify any vessel that reported bluefish landings during calendar year 2008. These dealer reports identified 624 vessels that landed bluefish in States from Maine to North Carolina. However, this database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 908 vessels [1] that landed bluefish in North Carolina and 685 vessels that landed bluefish on Florida's east coast. Bluefish landings in South Carolina and Georgia were near zero in 2008, representing a negligible proportion of the total bluefish landings along the Atlantic Coast. In recent years, approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

[1] Some of these vessels were also identified in the Northeast dealer data; therefore, double counting is possible.

The IRFA in the Draft EA analyzed three TAL alternatives (including a no action/status quo alternative) for 2010 Atlantic bluefish fishery. All quota alternatives considered are based on various commercial harvest levels for bluefish (a low, medium, and high level of harvest). The Council approved a transfer of 5.387 million lb (2,444 mt) from the recreational sector to the commercial sector. For analysis of impacts of each TAL alternative, the maximum potential RSA quota of 3 percent of the TAL was used. Alternative 1 (Council's preferred) would implement a TAL of 29.264 million lb (13,274 mt). Alternative 2 would implement a TAL of 33.563 million lb (15,224 mt). Alternative 3, the no action alternative, is considered to be synonymous with status quo management measures for 2010 since failure to specify any management measures (no action) would be in gross violation of the Magnuson-Stevens Act. Under Alternative 3, the TAL would be the same as the 2009 TAL, or 29.356 million lb (13,316 mt).

The proposed 2010 Atlantic bluefish specification alternatives for TAL are shown in Table 2, along with the resulting commercial quota and RHL after the applicable transfer described earlier in the preamble and after deduction of the RSA quota. Alternative 1 (Council's preferred) would allocate 10.051 million lb (4,559 mt) to the commercial sector and 18.335 million lb (8,317 mt) to the recreational sector. Alternative 2 would result in the least restrictive commercial quota and would allocate 10.185 million lb (4,620 mt) to the commercial sector and 22.371 million lb (10,147 mt) to the recreational

sector. Alternative 3 (status quo) would allocate 9.533 million lb (4,324 mt) to the commercial sector and 18.942 million lb (8,592 mt) to the recreational sector. The commercial quota and RHL under Alternative 3 would be slightly different than those in 2009 due to differences in the RSA.

TABLE 2—PROPOSED 2010 ATLANTIC BLUEFISH SPECIFICATION ALTERNATIVES FOR TAL, COMMERCIAL QUOTA, AND RHL

[Million lb].

	TAL	Commercial quota	RHL
Alternative 1	29.264 (13,274 mt)	10.051 (4,559 mt)	18.335 (8,317 mt).
Alternative 2	33.563 (15,224 mt)	10.185 (4,620 mt)	22.371 (10,147 mt).
Alternative 3	29.356 (13,316 mt)	9.533 (4,324 mt)	18.942 (8,592 mt).

Under Alternatives 1, 2, and 3, the 2010 allowable commercial landings are 68, 70, and 60 percent higher than the 2008 commercial landings, respectively. While most States show similar directional changes in fishing opportunities as the overall change in fishing opportunity in 2010 compared to 2008 landings, New York shows a reduction in fishing opportunity under all three alternatives compared to 2008 commercial landings. New York had a bluefish quota overage for fishing year 2008 in the amount of 34,149 lb (15,490 kg). Because of this overage in 2008, New York shows a reduction in bluefish landings in 2010 for each alternative.

Under Alternative 1, the recommended commercial quota is approximately 4 percent higher than the 2009 commercial quota. Based on available data, approximately 32 percent of the TAL was not harvested during the 2009 fishing year. Only one State, New York, fully harvested its initial bluefish quota and received allocation transfers from other States in 2009. Five additional States—Massachusetts, Rhode Island, Connecticut, New Jersey, and North Carolina—harvested more than 50 percent of their bluefish quotas, while the remaining States only harvested between 0 and 40 percent of their allocations. Given these recent trends in landings, it is unlikely that the proposed TAL will be fully harvested in 2010, resulting in no overall coastwide economic impacts on the bluefish fishery. The economic impacts of the preferred alternative are therefore likely to be neutral or positive relative to the status quo and other alternatives. For States that did not harvest their quotas in 2009, the proposed 2010 quotas are also not expected to result in any detrimental impacts. For States that exceeded their initial quota allocations in 2009, but received quota transfers from other States, the apparent economic losses would likely be mitigated by quota transfers during 2010, therefore resulting in no overall impacts.

To assess the impact of the alternatives on commercial fisheries, the Council conducted a threshold analysis and analysis of potential changes in ex-vessel gross revenue that would result from each alternative using Northeast dealer reports and South Atlantic Trip Ticket reports. The analysis projected that there would be no revenue change for 493 vessels, while 124 vessels could incur slight revenue losses of less than 5 percent. Approximately 9 vessels could incur revenue losses of more than 5 percent. The majority of these vessels have home ports in New York. Of the 9 vessels that may experience revenue losses of more than 5 percent, 56 percent had gross sales of $1,000 or less, and 89 percent had gross sales of $10,000 or less, indicating that dependence on income from fishing for some of these vessels is very small. The analysis of Alternative 1 on commercial vessels in the South Atlantic concluded that there would be no loss of revenue for vessels that land bluefish in North Carolina or Florida.

The analysis of Alternative 2, which includes a 5-percent increase in the commercial quota from 2009, concluded that there would be no revenue change for 493 vessels, while 126 vessels could incur slight revenue losses of less than 5 percent. Approximately 7 vessels could incur revenue losses of between 5 percent and 19 percent. Most of the vessels projected to incur revenue losses of greater than 5 percent had home ports in New York. The analysis of impacts of Alternative 2 on commercial vessels in the South Atlantic concluded that no revenue reduction would be expected for vessels that land bluefish in North Carolina or Florida.

The analysis of Alternative 3 concluded that there would be no change in revenue for 493 vessels, while 121 vessels could incur slight revenue losses of less than 5 percent. Approximately 12 vessels could incur revenue losses of between 5 percent and 29 percent. The analysis of impacts of Alternative 3 on commercial vessels in the South Atlantic concluded that no revenue reduction would be expected for vessels that land bluefish in North Carolina or Florida.

For Alternative 1, the recommended RHL for the recreational sector (18.335 million lb, 8,317 mt) is approximately 3 percent below the recreational landings for 2008 and projected 2010 landings (18.9 million lb, 8,573 mt) and 6 percent below the RHL implemented for 2009 (19.528 million lb, 8,858 mt). There is very little empirical evidence regarding the sensitivity of charter/party anglers to regulation. If the proposed measures discourages trip-taking behavior among some of the affected anglers, the demand for party/charter boat trips may be slightly negatively impacted. If the proposed measures do not have a negative impact on the value or satisfaction the affected anglers derive from their fishing trips, party/charter revenues would remain unaffected. The IRFA analyzed the maximum transfer amount from the recreational sector to the commercial sector, but future updates of recreational harvest projections could result in a different transfer amount.

Analysis of Alternative 2 on the recreational sector concluded that the RHL for 2010 would be 18 percent above recreational landings in 2008 and projected 2010 landings. Because the RHL would be above the projected recreational landings for 2010, Alternative 2 would not be expected to have negative effects on recreational fishermen or affect demand for party/charter boat trips.

Analysis of the impacts of Alternative 3, which includes a RHL less than 1 percent above recreational landings in 2008 and projected 2010 landings, would not be expected to have any negative effects on recreational fishermen or affect the demand for party/charter boat trips. Analysis of Alternative 3 concluded that this alternative would not be expected to affect angler satisfaction and would be expected to result in recreational landings close to the RHL.

The IRFA also analyzed the impacts on revenues of the maximum RSA amount (3 percent of the TAL) and found that the social and economic impacts are minimal. Assuming that the

full RSA quota of 878,000 lb (398 mt) is landed and sold to support the proposed research project (a supplemental finfish survey in the Mid-Atlantic), then all of the participants in the fishery would benefit from the anticipated improvements in the data underlying the stock assessments. Because the recommended overall commercial quota is higher than 2008 landings, no overall negative impacts are expected in the commercial sector. Based on recent trends in the recreational fishery, recreational landings will more than likely remain below the recommended harvest level in 2009.

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

Dated: March 1, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–4681 Filed 3–5–10; 8:45 am]

BILLING CODE P

Notices

Federal Register
Vol. 75, No. 44
Monday, March 8, 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

Information Collection; Timber Purchaser Cost and Sales Data

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, Timber Purchaser Cost and Sales Data.

DATES: Comments must be received in writing on or before May 7, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Forest Management, Attn: Richard Fitzgerald, Mail Stop 1103, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–1103.

Comments also may be submitted via facsimile to 202–205–1045 or by e-mail to: *cost_collecting@fs.fed.us.*

The public may inspect comments received at the Office of the Director, Forest Management Staff, Forest Service, USDA, Room 3 NW., Yates Building, 1400 Independence Avenue, SW., Washington, DC. Visitors are encouraged to call ahead to 202–205–1496 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Timber Staff, Forest Management at 202–205–1753. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: *Title:* Timber Purchaser Cost and Sales Data.

OMB Number: 0596–0017.

Expiration Date of Approval: June 30, 2010.

Type of Request: Extension of a currently approved collection.

Abstract: The Forest Service sells timber and other forest products on national forest lands to achieve policies set forth in the Multiple-Use Sustained Yield Act of 1960, and the Forest and Rangeland Renewable Resources Planning Act of 1974. Timber must not be sold for less than the appraised value (Pub. L. 94–588). The Forest Service may not sell timber below a minimum stumpage rate established by the Chief of the Forest Service, ensuring that timber sales recover some of the costs associated with preparation and administration of timber sales.

Forest Service timber appraisers develop advertised prices using transaction evidence or a residual value form of appraisal. The Forest Service collects and uses the following to develop transaction evidence and residual value appraisal systems: (1) Product value, (2) manufacturing cost, (3) falling and bucking costs, (4) skidding and loading costs, and (5) hauling costs.

In many areas, the Forest Service purchases lumber product values from the Western Wood Products Association. The Forest Service, via contracting officers, also collects data from timber purchasers and uses it to develop fair market average value and cost information for appraisals, as well as advertised prices for national forest timber. Forest Service staff at the Albuquerque Service Center analyzes the data. All data collected is subject to verification.

Standard timber sale contract forms FS–2400–6 and FS–2400–6T contain a provision requiring timber purchasers to furnish data to the Forest Service upon request. The Forest Service consulted with several timber industry groups during the development of this standard contract provision, including but not limited to: Western Wood Products Association, National Forest Products Association, Western Forest Industries Association, and Industrial Forestry Association.

States and other agencies also use the data in appraisals. Additionally, timber purchasers rely upon cost collection to help with independent appraisals of Federal timber and to estimate the cost of subcontracting aspects of Federal timber harvest activities.

The data is collected from various sources, ranging from paper to electronic media. The Forest Service does not provide forms for the collection of this data. Some firms mail the data to the Forest Service, others provide access to records and duplication equipment, and some firms provide on-site access to electronic data. Data gathered is not available from other sources.

Estimate of Annual Burden: 1 hour per request.

Type of Respondents: Timber sale purchasers.

Estimated Annual Number of Respondents: 20.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 20 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: March 2, 2010.

Faye L. Krueger,

Acting Associate Deputy Chief, NFS.

[FR Doc. 2010–4810 Filed 3–5–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

RIN 0572–ZA01

Broadband Initiatives Program

AGENCY: Rural Utilities Service, Department of Agriculture.

ACTION: Notice of Extension of Application Window for Notice of Funds Availability (NOFA) and solicitation of applications.

SUMMARY: On January 24, 2010, the Rural Utilities Service (RUS) announced a second round funding Notice of Funds Availability (NOFA) for the Broadband Initiatives Program (BIP) in the **Federal Register** at 75 FR 3820. The closing date for submission of applications was announced as March 15, 2010, at 5 p.m. Eastern Time (ET). In response to requests by a wide variety of stakeholders, RUS is extending the application window for applications under the second round NOFA until March 29, 2010 at 5 p.m. ET.

Contact Information: For general inquiries regarding BIP, contact David J. Villano, Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture (USDA), *e-mail: bip@wdc.usda.gov, telephone:* (202) 690–0525. For inquiries regarding BIP compliance requirements, including applicable federal rules and regulations protecting against fraud, waste and abuse, contact *bipcompliance@wdc.usda.gov* for BIP. You may obtain additional information regarding applications for BIP via the Internet at *www.broadbandusa.gov.*

Dated: March 2, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–4780 Filed 3–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai National Forest, Fortine Ranger District, Montana; Galton Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA—Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of transportation system and access management alternatives, vegetation management alternatives, and recreation project alternatives in the Galton Decision Area (Decision Area) on the Fortine Ranger District of the Kootenai National Forest. The Forest Service is seeking comments from Federal, State, and local agencies and individuals and organizations that may be interested in or affected by the proposed actions. The comments will be used to prepare the draft EIS (DEIS).

DATES: Written comments concerning the scope of the analysis must be postmarked or received within 30 days following publication of this notice. The draft environmental impact statement is expected in May of 2010 and the final environmental impact statement is expected in November of 2010.

ADDRESSES: Send written comments concerning the proposed action to Betty Holder, District Ranger, Fortine Ranger District, P.O. Box 116, Fortine, MT 59918. All comments must contain: Name of commenter, postal service mailing address, and date of comment.

FOR FURTHER INFORMATION CONTACT: Moira McKelvey, Writer/Editor, Fortine Ranger District, P.O. Box 116, Fortine, MT 59918.

SUPPLEMENTARY INFORMATION: The Decision Area is located east of US Highway 93 from the U.S./Canada border to the Kootenai National Forest boundary south of Dickey Lake and includes a small portion of National Forest System Lands (NFSL) west of U.S. Highway 93 in the Dickey Lake and Ant Flat area. The Decision Area encompasses all of three (3) Planning Areas (Wigwam, Grave, and Murphy) and the Fortine Ranger District portions of two (2) Planning Areas (Stillwater and Ksanka). This area includes the Ten Lakes Wilderness Study Area (WSA), the Ten Lakes Scenic Area, Grave Creek, Therriault Lakes. Dickey Lake, Marston, and Ant Flat. The boundary for this project covers approximately 170,300 acres of which approximately 127,380 acres is National Forest System Land.

Purpose and Need for Action

The purpose and need for the project is to: (1) Provide the minimum system of roads and road uses that are needed for Forest Service land management activities and recreational access while reducing road impact to water quality and secure wildlife habitat and reducing road maintenance costs; (2) Provide trail loop opportunities and trail access to remote areas; (3) Provide ATV and motorcycle enthusiasts with trails on which they can ride their non-street legal vehicles and where nonlicensed riders can ride; (4) Designate mountain bike use that is compatible with the Montana Wilderness Study Act; (5) Designate allowed non-winter uses on all trails to reduce potential conflicts between user groups; (6) Designate over-snow vehicle use that is compatible with the Montana Wilderness Study Act while minimizing impacts to wildlife species such as grizzly bear; (7) Provide quiet winter recreation areas (non-motorized); (8) Provide a shelter facility for winter recreation users; (9) Reduce fuels within the wildland urban interface; (10) Create openings to provide big game browse; (11) Improve habitat for whitebark pine stand survival and regeneration; (12) Re-establish the natural role of fire in the ecosystem; (13) Provide a stable flow of timber products for the local and regional economy; and (14) Enhance recreational use and safety.

Proposed Action

The Proposed Action would result in a year round travel plan for the Galton Project Area, which includes the Ten Lakes Wilderness Study Area. Over-snow vehicle use would be allowed from 12/1 through 3/31 in a regular season on 26 miles of designated trail routes leading to 38,411 acres of contiguous National Forest System Lands open to over-snow vehicle use. Over-snow vehicle use would be allowed in a late season from 4/1 to 5/31 on 31 miles of designated trail leading to 4,445 acres of contiguous National Forest System Lands open to over-snow vehicle use. The access within the open areas can be limited due to natural features such as terrain and vegetation.

7.65 miles of road would be restricted for quiet winter recreation. The non-winter portion of the travel plan includes trail use designations to minimize conflict between user groups. The Proposed Action includes construction of 15.25 miles of new trail and the reconstruction of 2 miles of trail. The Proposed Action also would result in the conversion of 20.12 miles of road currently managed as trail to non-motorized trail and 7.85 miles of road converted to motorized trail. Additionally, 20.35 miles of road are proposed for decommissioning and 24.26 miles of road to be put into intermittent stored service. 9.56 miles of road are proposed to be restricted for all motorized use in Big Game Winter Range with an additional 4.69 miles of road restricted for over-snow vehicle use in Big Game Winter Range.

The Proposed Action would result in 9,043 acres of fuel treatment. This includes 191. acres of non-commercial understory thinning, 7,973 acres of prescribed burning only, and 879 acres of prescribed burning with mechanical pretreatment.

The Forest Service proposes to complete 1,814 acres of commercial vegetation management. This includes 226 acres of regeneration harvest (shelterwood and seedtree prescriptions) and 133 acres of regeneration harvest in clearcut with

reserves prescription. The Proposed Action also calls for 46 acres of commercial thinning along with 1,368 acres of improvement cutting as intermediate harvests. 41 acres are proposed to be cut for vista enhancement. The Forest Service also proposes to restore Locke Cabin, improve the parking facility at Murphy Lake, make improvements to camping facilities at the Bunchgrass dispersed camping site, improve the picnic and day use area at Little Therriault Lake, and construct a warming pavilion at Big Therriault Lake.

The Proposed Action also includes a number of special use permits which will expire during the period this project will be implemented.

Possible Alternatives

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed activities will be implemented. Additional alternatives will be considered to achieve the project's purpose and need for action, and to respond to specific resource issues and public concerns.

Responsible Official

Paul Bradford, Forest Supervisor, Kootenai National Forest, 31374 Highway 2 West, Libby, MT 59923.

Nature of the Decision To Be Made

A 2007 lawsuit settlement agreement with the Montana Wilderness Association commits the Forest Service to develop summer and winter travel plans for the Ten Lakes Wilderness Study Area. The Galton Project includes travel planning for the Ten Lakes WSA. This project will also reduce hazardous fuels within and outside the wildland-urban interface, provide 6.0 MMBF of commercial forest products, provide for recreation facilities, and evaluate special use permits.

Scoping Process

Beginning in January 2008, efforts were made to involve the public in considering management opportunities within the Decision Area. Open houses were held on February 13, 25, and 26, 2008. A scoping package was mailed for public review on June 29, 2009. The proposal will be included in the quarterly Schedule of Proposed Actions. Comments received prior to this notice will be included in the documentation for the EIS.

Preliminary Issues

Preliminary issues identified include access, including roads, mountain bikes and over-snow vehicles.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. At this stage of the planning process, site-specific public comments are being requested to determine the scope of the analysis, and identify significant issues and alternatives to the Proposed Action.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency published the notice of availability in the **Federal Register.** The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviews of DEIS' must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803, F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (ED, Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statements. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of The National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Paul Bradford,
Forest Supervisor.

[FR Doc. 2010–4687 Filed 3–5–10; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Andrew Pickens Ranger District; South Carolina; AP Loblolly Pine Removal and Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The AP Loblolly Pine Removal and Restoration Project is a district-wide project that includes 40 compartments located across the Andrew Pickens Ranger District, Sumter National Forest in Oconee County, South Carolina. Loblolly pine is a southern pine species that is not native to mountain regions in the upstate. This species was planted extensively in plantations across the district in the past, primarily in an effort to increase pine productivity for timber products. Most of the plantations have suffered from insect and disease related mortality such as southern pine beetle and need to be restored to native hardwoods and pines and understory plants more typical of the Chattooga River and Blue Ridge Mountains and Foothills (Management Area 2 and 3, respectively). Also, habitat diversity would be improved by developing and maintaining early successional habitat capable of supporting existing native and other desired non-native plants (including the federally endangered smooth coneflower, *Echinacea laevigata*) and wildlife species. This habitat would be maintained with herbicide, prescribed fire and also manual and mechanical treatment. Woodlands are forests with relatively low tree densities of 25–60% forest cover with understories that are dominated by native grasses and forbs. Five stands within the project area would be developed and maintained as woodland habitat (202 acres).

DATES: Comments concerning the scope of the analysis must be received by April 7, 2010. The draft environmental impact statement is expected by July 2010 and the final environmental impact statement is expected by November 2010.

ADDRESSES: Send written comments to USDA Forest Service, 112 Andrew Pickens Circle, Mountain Rest, SC

29664. Comments may also be sent via e-mail to *comments-southern-francismarion-sumter-andrewpickens@fs.fed.us*, or via facsimile to 864–638–2659.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

FOR FURTHER INFORMATION CONTACT: Michael B. Crane (*mcrane@fs.fed.us*) and/or Nelson Gonzalez-Sullow (*nelsongonzalez@fs.fed.us*), 864–638–9568.

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 Time, Monday through Friday.

Purpose and Need for Action

The district has approximately 5,600 acres of planted loblolly pine stands. All of this acreage consists of relatively pure pine stands with little to no native hardwood and pines growing in the upper canopy. A number of stands in the compartments were converted to pine plantations 30 to 40 years ago by clear cutting more diverse stands and planting them to loblolly pine (*Pinus taeda*) after intensive site preparation treatments. Few hardwood trees exist in the overstory of most of these stands and hardwood sprouts and saplings abound in the understory. Some of the stands proposed for treatment have been heavily impacted by southern pine beetle (SPB) with the most recent epidemics occurring in 2002 and 2003. Mortality was widespread across the district in pine plantations. Other stands are sparse due to poor planting success or to past logging that did not remove all of the loblolly pine. The density of trees in these stands range from sparse to a dense stocking basal area of 160 square feet per acre and greater. With a lack of disturbance, these plantations are dominated by shade tolerant tree species such as red maple, black gum, dogwood, and sourwood. The lack of early successional habitat is a limiting factor on the Andrew Pickens Ranger District. The endangered plant, smooth coneflower has been limited in its distribution as a result of lack of disturbance and growth of shade tolerant species. The species is known to occur adjacent to several loblolly stands. Plant surveys have identified current locations of the plant and potential habitat areas have been identified. There is an opportunity to promote the expansion and establishment of this species in some of the proposed treatment areas. The Sumter National Forest proposed endangered, threatened and sensitive species (PETS) list includes several other species that require open stand conditions to thrive. These species generally have been restricted to roadsides and utility rights-of-way (ROWs) because of the lack of disturbance on these sites.

Woodlands provide habitat for a variety of disturbance-dependent, early successional game and nongame wildlife species in all stages of their lifecycles. Populations of early successional bird species, such as northern bobwhite quail, ruffed grouse, field sparrow, and golden-winged warbler, have been declining on the Sumter National Forest because of a lack of suitable habitat. Woodlands also provide open stand conditions with ample sunlight and disturbance conditions conducive to certain plants including the federally endangered smooth coneflower.

The AP Loblolly Pine Removal and Restoration Project is located on four management prescription areas:

Management area	Designation
4F	Scenic Areas.
7.E.2	Dispersed Recreation Areas with Vegetation Management.
8.A.1	Mix of Successional Forest Habitats.
11	Riparian Corridors.

The purpose and need for this project is to restore the current landscape condition within the area to more native forest vegetation. Native vegetation would improve ecosystem health, increase habitat diversity and viability of a variety of plant and animal species in the long term.

The off-site loblolly pine stands would be replaced with native tree species appropriate for the habitat such as shortleaf pine, pitch pine, and table mountain pine. A blight resistant American chestnut (once native to this area) would also be planted depending on suitable habitats and site conditions as well as species availability for planting.

Prescribed burning, manual, mechanical, and herbicide treatments would be used to reduce woody competition and help establish desired native plant communities including smooth coneflower. Woodlands would also be maintained to provide desirable habitat for native plants and animal species as well as add to habitat diversity.

Woodlands are forests with relatively low tree densities of 25–60% forest cover with understories that are dominated by native grasses and forbs. Management that promotes this native forest vegetation would serve a multitude of resources, such as to enhance hard mast production favorable to wildlife or to improve forest and watershed health with a variety of resilient native species that would be typically found on these sites. Additionally, moving from a plantation-type stand to one of more natural composition would serve to increase both structural and spatial vegetative diversity, create early successional habitat, reduce the potential for further impacts from southern pine beetles and reduce fire risk and safety hazards from dead loblolly pine trees. By managing some of these stands as early successional habitat, smooth coneflower would expand into these areas.

Proposed Action

The Andrew Pickens Ranger District proposes the following treatments:

Regeneration Harvest, With Reserves (Cut-and-Remove—3,679 Acres)

Timber harvesting would occur in timber stands where operable volumes now exist. This would include establishing log landings and loading areas, skid trails, and would include road access in the form of temporary roads, reconstructed roads, or newly constructed forest system roads. Unmerchantable loblolly and other undesirable species would be cut down by manual (saws, hand tools) or mechanized felling equipment methods after commercial timber harvest concludes. In addition to cutting loblolly pine, harvest would also include Virginia pine, white pine, red maple, yellow poplar and other less desirable hardwoods. Desirable oaks, hickories, shortleaf pine, table mountain pine, and pitch pine would be retained where possible unless removal is necessary for safety or for equipment operability reasons.

Regeneration Harvest, With Reserves (Cut-and-Leave—1,926 Acres)

Loblolly pine stands would be cut down and not removed where log

volumes are sparse or too small for a viable commercial sale, or occur in areas inaccessible to logging equipment. Cut and leave treatments would also be used in stands where loblolly pine saplings have come in after previous removal harvests. Cutting methods would include manual methods that use hand tools and chainsaws. Virginia pine and other less desirable species such as, but not limited to, white pine, red maple and yellow poplar may be cut for safety reasons, or to favor desirable residual oaks, hickories, shortleaf pine, table mountain pine and pitch pine.

Additional Treatments

Site Preparation and Release (3,264 Acres) for Reforestation

Site preparation and release treatments for reforestation include stem injection and foliar spray using the herbicide imazapyr and triclopyr that would be used in identified regeneration units.

Stem injections would be applied with hatchets and squirt bottles, or similar application devices, using a mixture of 64 oz water, 64 oz Garlon 3A or equivalent (triclopyr amine) and 6 oz Arsenal AC or equivalent (imazapyr). Stem injection would be applied to target vegetation too large to treat with a foliar spray. This application is made between the first of July and the end of September.

Directed foliar spray would be applied using backpack sprayers. The application is a low volume direct spray where foliage is sprayed or speckled with herbicide. This application is made between the first of July and the end of September. Per gallon of mix water, the herbicide mixture for this application is: 0.5 ounce Arsenal AC or equivalent (imazapyr), 2 ounces of Garlon 4 or equivalent (triclopyr ester), ½ ounce surfactant, and spray pattern indicator.

Herbicide would be used for site preparation to prepare the site for planting trees. Shortleaf pine would be planted on a majority of the sites. Other native species would be planted including, table mountain pine, pitch pine, and a blight resistant strain of American chestnut. Plantings would take advantage of gaps created during timber harvest and from site preparation since desirable overstory trees would be left as reserves in most units. This would result in a two-aged structure to most treated stands. A herbicide crop tree release treatment would be done about 3 to 5 years after trees are planted. The treatment would reduce competition to the desired understory trees so that they could become dominant in the stands. Broadleaf vegetation would be treated to control competition with planted or naturally growing desirable native shortleaf pine, pitch pine, oak, American chestnut and hickory. Exceptions include protecting desirable soft mast and flowering trees.

Reforestation (3,264 Acres)

Native shortleaf pine seedlings would be the major species planted (12 ft. by 12 ft. spacing) but would also include pitch pine, Table Mountain pine and American chestnut where suitable habitat exists and if seed and/or seedlings are available.

Woodland Treatments (202 Acres).

The woodland treatment would remove all loblolly pine and less desirable tree species including but not limited to Virginia pine, white pine, maples, and yellow poplar. Three stands contain enough volume for a commercial timber harvest and two do not. The treatment would include thinning oaks, hickories, and shortleaf pine to a basal area (BA) of 30–40 ft^2/acre. All oak, hickory, and shortleaf pine would be left where the BA is currently less than 30–40 ft^2/acre.

After initial treatments are completed, the areas would be prescribed burned on a periodic basis (estimated within 1–5 years). Prescribed burning is covered under an existing NEPA decision.

Herbicide, manual, and mechanical methods would be applied to all less desirable tree species (sprouts and seedlings) within 1–2 years after the initial post-harvest prescribed burn. These methods may be applied up to two more times after the initial treatment. Manual and mechanical methods including but not limited to hand tools (chainsaws, brush saws), and/or heavy equipment (tractor with mower, gyro-track) would be used to control sprouts and seedlings of non-desirable tree species to maintain the woodland condition. Mechanical treatments would grind up or masticate undesirable understory vegetation. Three of these stands proposed as woodland treatment would also be managed to benefit smooth coneflower.

Directed foliar spray would be applied using backpack sprayers. The application is a low volume direct spray where foliage is sprayed or speckled. This application is made between the first of July and the end of September. Per gallon of mix water, the herbicide mixture for this application is: 0.5 ounce Arsenal AC or equivalent (imazapyr), 2 ounces of Garlon 4 or equivalent (triclopyr ester), ½ ounce surfactant, and spray pattern indicator.

Connected Actions

The following activities would be conducted in connection with vegetation management activities.

- *System Road Construction:* Twelve (12) system roads would be built providing access to 20 loblolly timber stands. These new roads are needed to provide access during timber harvest and to provide for long term resource management. These roads are designed by Forest Service engineers to specific standards that include designing drainage structures such as culvert installations, inside slope ditching, road crown specifications, widened turn-around, gates, and signage. Total specified system road construction is estimated at 8.2 miles but may vary once actual design is completed. Information on roads is contained in the road analysis.
- *Road Reconstruction and Maintenance:* System road reconstruction and maintenance would be needed on approximately 59.2 miles of roads. Reconstruction work would consist of but not be limited to graveling road surfaces, replacing culverts—including replacements for aquatic organism passage, ditch cleaning, removing brush and trees along road rights-of-way, installing, repairing or replacing gates and correcting road safety hazards. Road maintenance would consist of spot gravel replacement, blading, cleaning culverts, light brushing and mowing.
- *Temporary Roads:* Log landings that have no access to designated roads would be accessed by a temporary road that connects to the forest transportation system. Temporary roads are generally under 10 percent grade and road widths less than 14 feet. Approximately 4.9 miles of temporary roads are needed for access. Most of these would be reopening of former temporary roads that are in suitable locations, but for the most part have stabilized cut and fill slopes that may not be disturbed. Temporary roads would be closed and adequate erosion and stormwater control measures completed and replanted with vegetation.
- *Skid Roads:* Designated skid roads, some with temporary bridges or other protective measures, may be used to provide access over stream and drainage channels. It is estimated that skid roads would total less than 1.5 miles. They would be closed after use with adequate stormwater and erosion control measures.
- *Log Landings:* It is estimated that approximately 122 log landings would be needed. Log landings are locations where logs are piled and then loaded

onto trucks. Former landings sites would be used whenever appropriate to limit effects. They would be closed after use with adequate stormwater and erosion control measures. To view a map of locations of proposed treatments go to *http://www.fs.fed.us/r8/fms/sumter/resources/projects.current.php?p=1.1.7.3.*

Responsible Official

Andrew Pickens District Ranger

Nature of Decision To Be Made

Whether or not to implement the action as proposed or an alternative way to achieve the desired outcome.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

February 23, 2010.

Michael B. Crane,

District Ranger.

[FR Doc. 2010–4689 Filed 3–5–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Yakutat Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakutat Resource Advisory Committee will meet in Yakutat, Alaska. The purpose of the meeting is to continue business of the Yakutat Resource Advisory Committee. The committee was formed to carry out the requirements of the Secure Rural Schools and Selt-Determination Act of 2000. The agenda for this meeting is to review submitted project proposals and consider recommending projects for funding. Project proposals were due by March 19, 2010 to be considered at this meeting.

DATES: The meeting will be held March 30, 2010 from 6–9 p.m.

ADDRESSES: The meeting will be held at the Kwaan Conference Room, 712 Ocean Cape Drive, Yakutat, Alaska. Send written comments to Lee A. Benson, c/o Forest Service, USDA, P.O. Box 327, Yakutat, AK 99689, (907) 784–3359 or electronically to *labenson@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lee A. Benson, District Ranger and Designated Federal Official, Yakutat Ranger District, (907) 784–3359.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring resource projects or other Resource Advisory Committee matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 30, 2010 will have the opportunity to address the Council at those sessions.

Dated: February 19, 2010.

Lee A. Benson,

District Ranger, Yakutat Ranger District, Tongass National Forest.

[FR Doc. 2010–4691 Filed 3–5–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee will meet in Petersburg, Alaska. 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 update Committee members on changes in the legislation, elect officers; and develop operating guidelines and project evaluation criteria. The committee may also make funding recommendations at this meeting.

DATES: The meeting will be held Thursday, March 25th from 3:30–5:30 p.m., on Friday, March 26th from 8 a.m.–5 p.m., and on Saturday, March 27th from 8 a.m.–5 p.m.

ADDRESSES: The meeting will be held at the Petersburg Lutheran Church Holy Cross House at Fifth and Fram Streets in Petersburg, Alaska. Written comments should be sent to Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833. Comments may also be sent via e-mail to *csavagefs.fed.us*, or via facsimile to 907–772–5995.

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 Petersburg Ranger District office at 12 North Nordic Drive during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

FOR FURTHER INFORMATION CONTACT: Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833, phone (907) 772–3871, e-mail *csavage@fs.fed.us*, or Robert Dalrymple, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *rdalrymple@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: updating the committee on the Secure Rural Schools and Community Self Determination Act (Pub. L. 110–343); election of officers; development of committee operating guideliness and criteria for evaluation of projects proposed for funding. The committee may review project proposals and make recommendations for funding if time allows. 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 March 19, 2010 will have the opportunity to address the Committee at those sessions.

Dated: February 22, 2010.

Forrest Cole,

Forest Supervisor.

[FR Doc. 2010–4322 Filed 3–5–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. FSIS 2010–0008]

Improving Tracing Procedures for E. coli O157:H7 Positive Raw Beef Product

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a public meeting on March 10, 2010 to discuss Agency procedures for identifying suppliers of source material used to produce raw beef product that FSIS has found positive for *Escherichia coli* (*E. coli*) O157:H7. FSIS will also discuss additional verification activities the Agency will conduct at suppliers in response to positive *E. coli* O157:H7 results. In addition, FSIS will seek input from meeting participants on ways to improve Agency procedures for identifying product that may be positive for *E. coli* O157:H7.

DATES: The public meeting will be held on March 10, 2010, from 8:30 a.m. to 1 p.m. Submit comments on or before May 7, 2010.

ADDRESSES: The public meeting will be held in the USDA South Building Jefferson Auditorium, 1400 Independence Avenue, SW., Washington, DC 20250. All participants should enter the USDA South Building at Wing 5 on Independence Avenue. There will security personnel at the entrance to check identification.

Registration: Pre-registration is recommended. To pre-register, visit the FSIS Web site at: *http://www.fsis.usda.gov/News/Meetings_&_Events/*. You can click on register and then complete the registration form including all required fields.

Comments and Agenda: In addition to providing oral comments at the public meeting, FSIS invites interested persons to submit written comments on the issues addressed at the public meeting. FSIS will finalize an agenda on or before the meeting date and will post it on the FSIS Web page *http://www.fsis.usda.gov/News/Meetings_&_Events/*. The official transcript of the meeting will be available for viewing by the public in the FSIS Docket Room and on the FSIS Web site *http://www.fsis.usda.gov/News/Meetings_&_Events/* when it becomes available.

Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov*. Follow the online instructions at that site for submitting comments.

Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2–2127, George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5474, Beltsville, MD 20705–5474.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2010–0008. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information to *http://www.regulations.gov*.

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. All comments submitted in response to this proposal, as well as background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For logistical questions related to the meeting: Ms. Sheila Johnson, Congressional and Public Affairs, 1400 Independence Avenue, SW., Washington, DC 20250, 202–690–6498, *e-mail: Sheila.Johnson@fsis.usda.gov*.

For technical information related to the meeting: Dr. Daniel Engeljohn, Deputy Assistant Administrator, Office of Policy and Program Development, 1400 Independence Avenue, SW., Washington, DC 20250–3700, (202) 205–0495.

SUPPLEMENTARY INFORMATION: FSIS is evaluating the effectiveness of its policies and procedures in responding to findings that raw beef is positive for *E. coli* O157:H7, and whether the Agency takes the appropriate steps to identify source materials used to produce the product and to identify other products derived from those source materials. One conclusion reached by FSIS thus far is that the Agency must improve its procedures for assessing the conditions at suppliers that may have resulted in the positive product.

FSIS has also concluded that it should conduct additional verification activities at suppliers that produced source materials for raw beef product that FSIS has found positive for *E. coli* O157:H7. Therefore, FSIS intends to issue new instructions to Enforcement, Investigations, and Analysis Officers (EIAOs) to conduct additional verification activities at suppliers in response to positive *E. coli* O157:H7 results. These instructions are intended to assist EIAOs is assessing conditions at the suppliers, including whether source materials used to produce the positive raw beef product may have been produced during high event periods. High event periods are production periods during which an establishment's sampling and testing program detects a series of positive test results that indicates a systemic failure or breakdown of process controls. If FSIS personnel determine that the subject source materials were produced during high event periods, the Agency may determine that additional product is implicated by the positive result. FSIS will issue these new instructions after the public meeting.

At the meeting FSIS will discuss the Agency's *E. coli* O157:H7 test data, its current policies for responding to *E. coli* O157:H7 positives, the Agency's current thinking for improving those policies, and information regarding next steps. An opportunity for participants to comment will be provided as well.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/Regulations_&_Policies/2010_Notices_Index/index.asp*. FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_&_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on: March 2, 2010.

Alfred V. Almanza,

Administrator.

[FR Doc. 2010–4781 Filed 3–5–10; 8:45 am]

BILLING CODE 3410–DM–P

ARCTIC RESEARCH COMMISSION

[USARC 10–018]

92nd Meeting

February 16, 2010.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 92nd meeting in Miami, FL, on March 15, 2010. The business session, open to the public, will convene at 8:30 a.m.

The Agenda items include:

(1) Call to order and approval of the agenda.

(2) Approval of the minutes from the 91st meeting.

(3) Commissioners and staff reports.

(4) Discussion and presentations concerning Arctic research activities.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic.

Any person planning to attend this meeting, who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission of those needs in advance of the meeting.

Contact person for further information: John Farrell, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

John Farrell,

Executive Director.

[FR Doc. 2010–4685 Filed 3–5–10; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Mohamad M. Elkateb; In the Matter of: Mohamad M. Elkateb, 29256 Marilyn Dr., Canyon Country, CA 91387. Respondent; Order Relating to Mohamad M. Elkateb

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS") has notified Mohamad M. Elkateb ("Elkateb") of its intention to initiate an administrative proceeding against Elkateb pursuant to Section 766.3 of the Export Administration Regulations (the "Regulations"),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (the "Act"),[2] through issuance of a Proposed Charging Letter to Elkateb that alleged that he committed one violation of the Regulations. Specifically, the charge is:

Charge 1 15 CFR 764.2(d)—Conspiracy

Between on or about July 9, 2004, and continuing through on or about August 16, 2004, Elkateb conspired and acted in concert with others, known and unknown, to violate the Regulations and to bring about an act that constituted a violation of the Regulations. The purpose of the conspiracy was to cause the export of U.S.-origin lab equipment from the United States to Syria, via Indonesia, without the required U.S. Government authorization. Pursuant to General Order No. 2 of May 14, 2004, set forth in Supplement No. 1 to Part 736 of the Regulations, authorization was required from BIS before the lab equipment, items subject to the Regulations,[3] could be exported from the United States to Syria. In furtherance of the conspiracy, Elkateb and his co-conspirators devised and employed a scheme to purchase U.S.-origin lab equipment for a customer in Syria from a foreign distributor of the U.S. manufacturer. This scheme was developed after Elkateb was informed by the U.S. manufacturer that there were restrictions on exporting to Syria. By engaging in this activity, Elkateb committed one violation of Section 764.2(d) of the Regulations.

Whereas, BIS and Elkateb have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

Whereas, I have approved of the terms of such Settlement Agreement; It is therefore ordered:

First, that for a period of one year from the date of issuance of the Order, Mohamad M. Elkateb, 29256 Marilyn Dr., Canyon Country, CA 91387, and when acting on behalf of Elkateb, his representatives, assigns, or agents ("Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the actions described below with respect to an item that is subject to the Regulations and that has been, will be, or is intended to be exported or reexported from the United States:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2009). The charged violation occurred in 2004. The Regulations governing the violation at issue are found in the 2004 version of the Code of Federal Regulations (15 CFR Parts 730–774 (2004)). The 2009 Regulations set forth the procedures that apply to this matter.

[2] 50 U.S.C. app. 2401–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executivc Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 13, 2009 (74 FR 41325 (Aug. 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*).

[3] EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c) (2004).

controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Elkateb by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Fourth, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register.**

This Order, which constitutes the final agency action in this matter, is effective immediately.

Issued this 26th day of February 2010.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2010–4776 Filed 3–5–10; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs; Allocation of Duty-Exemptions for Calendar Year 2010 for Watch Producers Located in the United States Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates calendar year 2010 duty exemptions for watch assembly producers ("program producers") located in the United States Virgin Islands ("USVI") pursuant to Public Law 97–446, as amended by Public Law 103–465, Public Law 106–36 and Public Law 108–429 ("the Act").

FOR FURTHER INFORMATION CONTACT: Gregory Campbell, Statutory Import Programs; phone number: (202) 482–2239; fax number: (202) 501–7952; and e-mail address: *Gregory.Campbell@trade.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Act, the Departments of the Interior and Commerce ("the Departments") share responsibility for the allocation of duty exemptions among program producers in the United States insular possessions and the Northern Mariana Islands. In accordance with section 303.3(a) of the regulations (15 CFR 303.3(a)), the total quantity of duty-free insular watches and watch movements for calendar year 2010 is 1,866,000 units for the USVI. This amount was established in *Changes in Watch, Watch Movement and Jewelry Program for the U.S. Insular Possessions,* 65 FR 8048 (February 17, 2000). There are currently no program producers in Guam, American Samoa or the Northern Mariana Islands.

The criteria for the calculation of the calendar year 2010 duty-exemption allocations among program producers within a particular territory are set forth in Section 303.14 of the regulations (15 CFR 303.14). The Departments have verified and, where appropriate, adjusted the data submitted in application form ITA–334P by USVI program producers and have inspected these producers' operations in accordance with Section 303.5 of the regulations (15 CFR 303.5).

In calendar year 2009, USVI program producers shipped 73,096 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of corporate income taxes paid by USVI program producers during calendar year 2009, and the creditable wages and benefits paid by these producers during calendar year 2009 to residents of the territory was a combined total of $1,501,892.

The calendar year 2010 USVI annual duty exemption allocations, based on the data verified by the Departments, are as follows:

Program producer	Annual allocation
Belair Quartz, Inc	500,000

The balance of the units allocated to the USVI is available for new entrants into the program or existing program producers who request a supplement to their allocation.

Dated: March 2, 2010.

Carole Showers,

Acting Deputy Assistant Secretary For Import Administration, Department of Commerce.

Dated: March 2, 2010.

Nikolao Pula,

Acting Deputy Assistant Secretary for Insular Affairs, Department of the Interior.

[FR Doc. 2010–4862 Filed 3–5–10; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU87

Marine Mammals; File No. 15126

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS National Marine Mammal Laboratory, (Responsible Party: Dr. John Bengtson, Director), Seattle, WA, has applied for a permit to conduct research on marine mammals in Alaska.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 7, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15126 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed

above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests a five-year permit to investigate the foraging ecology, habitat requirements, vital rates, and effects of natural and anthropogenic factors for ribbon seals (Phoca fasciata), spotted seals (P. largha), ringed seals (P. hispida), harbor seals (P. vitulina), and bearded seals (Erignathus barbatus) in the North Pacific Ocean, Bering Sea, Arctic Ocean and coastal regions of Alaska. The applicant requests permission to capture up to 150 of each ice-associated seal species (ribbon, spotted, ringed and bearded) per year and up to 250 harbor seals annually for measurement of body condition, collection of tissue samples (blood, blubber, muscle, skin, hair, vibrissae, swab samples), attachment of telemetry devices, and other procedures as described in the application. Up to 10 animals of each species would be intentionally recaptured each year for retrieval of instruments and additional sample collection. The applicant requests permission to harass an additional 3,000 of each ice associated seal species and 5,500 harbor seals annually incidental to capture activities or during collection of feces and other samples from haul-out substrate. The applicant requests allowance for unintentional mortality of five individuals of each species per year.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 2, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–4865 Filed 3–5–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number 0907141137–0119–08]

RIN 0660–ZA28

Broadband Technology Opportunities Program

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Funds Availability; Extension of Application Closing Deadline for Comprehensive Community Infrastructure (CCI) Projects.

SUMMARY: NTIA announces that the closing deadline for the submission of applications for Comprehensive Community Infrastructure (CCI) projects under the Broadband Technology Opportunities Program (BTOP) is extended until 5:00 p.m. Eastern Daylight Time (EDT) on March 26, 2010. There are no changes to the application filing window for Public Computer Center (PCC) and Sustainable Broadband Adoption (SBA) projects.

DATES: All applications for funding CCI projects must be submitted by 5 p.m. EDT on March 26, 2010. All applications for funding PCC and SBA projects must be submitted by 5 p.m. EDT on March 15, 2010.

FOR FURTHER INFORMATION CONTACT: For general inquiries regarding BTOP, contact Anthony Wilhelm, Director, BTOP, Office of Telecommunications and Information Applications, National Telecommunications and Information Administration, U.S. Department of Commerce (DOC), 1401 Constitution Avenue, NW., HCHB, Room 4887, Washington, DC, 20230; Help Desk email: *BroadbandUSA@usda.gov*, Help Desk telephone: 1–877–508–8364.

SUPPLEMENTARY INFORMATION: On January 22, 2010, NTIA published a Notice of Funds Availability (Second NOFA) and Solicitation of Applications in the Federal Register announcing general policy and application procedures for the second round of BTOP funding. 75 FR 3792 (2010). In the Second NOFA, NTIA established an application window for BTOP projects beginning February 16, 2010 at 8 a.m. Eastern Standard Time (EST) through March 15, 2010 at 5 p.m. EDT (application closing deadline).

NTIA announces this extension in the application closing deadline for CCI projects in the interest of ensuring that BTOP funding is made available in the most equitable manner. The complexity of preparing an infrastructure proposal that is truly comprehensive in scope and satisfies the CCI funding priorities outlined in the Second NOFA warrant reconsideration of the application closing deadline for CCI projects to facilitate the necessary coordination among the various stakeholders involved in or benefiting from the project. Additionally, there are a number of applicants whose infrastructure applications have been actively under consideration for funding in Round One. This extension of the application closing deadline will give those CCI applicants that are not selected for a Round One award additional time to strengthen the quality of their Round Two applications and maximize their opportunity to apply for BTOP funding.

All other requirements for CCI projects set forth in the Second NOFA remain unchanged. There are no changes to the requirements or application deadlines for PCC and SBA projects.

All applicants are strongly encouraged to submit their application early to avoid last minute congestion on the electronic intake system. However, early submission will not confer any advantage or priority in review.

Dated: March 2, 2010.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2010–4777 Filed 3–3–10; 1:00 pm]

BILLING CODE 3510–60–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 8, 2010.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or Jolanta Lawska, AD/

CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5075 or (202) 482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2009, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 31406 (July 1, 2009). Pursuant to requests from interested parties, the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period July 1, 2008, through June 30, 2009: Domenico Paone fu Erasmo, S.p.A. ("Erasmo"), Fasolino Foods Company, Inc. and its affiliate Euro–American Foods Group, Inc. ("Fasolino/Euro–American Foods"), Pastaficio Lucio Garofalo S.p.A. ("Garofalo"), Pastaficio Attilio Mastromauro Pasta Granoro S.r.L. ("Granoro"), Industria Alimentare Colavita, S.p.A. ("Indalco"), Pasta Lensi S.r.L. ("Lensi"), and PAM S.p.A. ("PAM"). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 42873 (August 25, 2009) ("*Initiation Notice*").

On September 8, 2009, the Department announced its intention to select mandatory respondents based on U.S. Customs and Border Protection ("CBP") Data. See Memorandum from George McMahon to Melissa Skinner entitled "Customs and Border Protection Data for Selection of Respondents for Individual Review," dated September 8, 2009. On September 11, 2009, the petitioners[1] withdrew their request for review with respect to Erasmo, Garofalo, Indalco, and PAM. As a result of the petitioner's request to withdraw the aforementioned companies, the Department issued a memorandum on October 21, 2009, which indicated that respondent selection was no longer necessary in the instant review because it was practicable for the Department to review the remaining companies, Lensi, Granoro, Garofalo and Fasolino/Euro–American Foods. On October 30, 2009, Lensi withdrew its request for a review.[2] On February 22, 2010, the petitioners withdrew their request for review with respect to Fasolino/Euro–American Foods.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now April 9, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Scope of the Order

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, by Codex S.r.L., by Bioagricert S.r.L., or by Instituto per la Certificazione Etica e Ambientale. Effective July 1, 2008, gluten free pasta is also excluded from this order. *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009). The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Extension of Time Limit of Preliminary Results

The preliminary results of this review are currently due no later than April 9, 2010. Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Consistent with section 751(a)(3)(A) of the Act, the Department may extend the 245-day period to 365 days if it is not practicable to complete the review within a 245-day period.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable. Specifically, we need additional time to thoroughly consider the responses to the questionnaires that the Department has issued to Garofalo and Granoro.

Therefore, we are extending the time period for issuing the preliminary results of review by 120 days, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). Therefore, the preliminary results are now due no later than August 7, 2010. However, because August 7, 2010, falls on a Saturday, the due date for the preliminary results falls on the next business day, *i.e.*, August 9, 2010. The final results continue to be due 120 days after publication of the preliminary results.

Partial Rescission of the 2008–2009 Administrative Review

If a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, the Secretary will rescind the review pursuant to 19 CFR 351.213(d)(1). In this case, the petitioners withdrew their request with respect to Erasmo, Garofalo, Indalco, and PAM within 90 days of initiation of this review. Garofalo self–requested a review, while the petitioners were the only party which requested a review of Erasmo, Indalco, and PAM. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are rescinding this review of the antidumping duty order on certain pasta from Italy, in part, with respect to Erasmo, Lensi, Indalco, and PAM.

On February 22, 2010, the petitioners withdrew their request with respect to Fasolino/Euro–American Foods. Although the 90-day deadline to

[1] The petitioners include the New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company.

[2] Petitioners did not request a review on Lensi.

withdraw a review request in the instant review was November 23, 2009, pursuant to 19 CFR 351.213(d)(1), the Secretary may extend the 90-day time limit if it is reasonable to do so. We determine it is reasonable to do so in this case because we have not expended significant resources conducting this review with respect to Fasolino/Euro–American Foods, having only issued to and received from interested parties several letters. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are also rescinding this review, in part, with respect to Fasolino/Euro–American Foods. This administrative review will continue with respect to Garofalo and Granoro. *See, e.g., Carbon Steel Butt–Weld Pipe Fittings from Thailand: Notice of Rescission of Antidumping Duty Administrative Review*, 74 FR 7218 (February 13, 2009).

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2008, through June 30, 2009, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") 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 sections 751(a)(1), 751(a)(3)(A) , and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: February 26, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–4856 Filed 3–5–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–963]

Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain potassium phosphate salts from the People's Republic of China (PRC).[1] For information on the estimated subsidy rates, *see* the "Suspension of Liquidation" section of this notice. *See* the "Disclosure and Public Comment" section, below, for procedures on filing comments regarding this preliminary determination.

DATES: *Effective Date:* March 8, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Huston or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4261 and (202) 482–3586, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On October 14, 2009, the Department initiated a countervailing duty (CVD) investigation of Certain Sodium and Potassium Phosphate Salts from the PRC. *See Certain Sodium and Potassium Phosphate Salts From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 54778 (October 23, 2009) (*Initiation Notice*). On November 9, 2009, the Department selected Hubei Xingfa Chemicals Group Co., Ltd. (Xingfa), and Jiangsu Chengxing Phosph–Chemicals Co., Ltd. (Jiangyin Chengxing) as mandatory company respondents. *See* Memorandum to Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Selection of Respondents for the Countervailing Duty Investigation of Certain Sodium and Potassium Phosphate Salts from the People's Republic of China," dated November 9, 2009. On November 10, 2009 the Department issued a CVD questionnaire to the Government of the People's Republic of China (GOC), requesting that the GOC forward the company sections of the questionnaire to Xingfa and to Jiangyin Chengxing.

In its initiation, the Department determined that there was a single class or kind of merchandise. *See Countervailing Duty Initiation Checklist: Certain Sodium and Potassium Phosphate Salts*, dated October 19, 2009 (*Initiation Checklist*). On November 21, 2009, the ITC issued its preliminary determination and found that there were four domestic like products: Sodium Triployphosphate (STPP), Monopotassium Phosphate (MKP), Dipotassium Phosphate (DKP) and Tetrapotassium Pyrophosphate (TKPP). *See* Investigations Nos. 701–TA–473 and 731–TA–1173 (Preliminary), *Certain Sodium and Potassium Phosphate Salts from China*, 74 FR 61173 (November 23, 2009) (*ITC Salts Preliminary*). The ITC determined that the industry producing MKP is materially injured or threatened with material injury, and that industries producing DKP and TKPP are threatened with material injury. The ITC made a negative determination regarding STPP, finding no reasonable indication that the industry producing

[1] The name of this investigation was changed from "Certain Sodium and Potassium Phosphate Salts from the People's Republic of China" to "Certain Potassium Phosphate Salts from the People's Republic of China" as a result of the U.S. International Trade Commission's (ITC) preliminary determination of no material injury or threat of material injury with regard to imports of sodium tripolyphosphate from the PRC. *See* the section "Case History," below; *see also* Memorandum to the File, "Certain Potassium Phosphate Salts from the People's Republic of China," dated November 20, 2009, a public document on file in the Department's Central Records Unit (CRU) in Room 1117 of the main Commerce building. Public versions of all memoranda cited in this notice are on file in the CRU.

STPP is materially injured or threatened with material injury.

As a result of the ITC's negative determination for STPP, and comments received from Xingfa and Jiangyin Chengxing, the Department rescinded its selection of Xingfa and Jiangyin Chengxing as mandatory company respondents because these companies produced and exported only, or mostly, STPP. *See* Memorandum to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Re–selection of Respondents in the Countervailing Duty Investigation of Certain Potassium Phosphate Salts from the People's Republic of China," dated December 3, 2009 (*Re–selection Memorandum*). The Department also changed the name of this investigation to "Certain Potassium Phosphate Salts from the People's Republic of China." *See* Memorandum to the File, "Certain Potassium Phosphate Salts from the People's Republic of China," dated November 20, 2009. In the *Re–selection Memorandum*, based on U.S. Customs and Border Protection (CBP) data for potassium phosphate salts, the Department then selected Lianyungang Mupro Import Export Co., Ltd. (Mupro), Mianyang Aostar Phosphate Chemical Industry Co., Ltd. (Aostar), and Shifang Anda Chemicals Co., Ltd. (Anda), the largest (by volume) publicly identifiable Chinese producers/exporters of subject merchandise during the period of investigation (POI), as the new mandatory company respondents in this investigation. *See Re–selection Memorandum*. The Department informed the GOC of its decision on December 3, 2009, and issued CVD questionnaires to Mupro, Aostar, and Anda (hereinafter, mandatory company respondents) on December 4, 2009, confirming receipt thereof through FedEx. *See* Memorandum to the File, "Certain Potassium Phosphate Salts from the People's Republic of China–Respondent Questionnaire Proof of Delivery," dated December 15, 2009. Neither the GOC, nor the three mandatory company respondents, submitted any responses to the Department's questionnaires.

At the request of ICL Performance Products LP and Prayon, Inc. (Petitioners), on November 25, 2009, we postponed the preliminary determination in this investigation until February 21, 2010, in accordance with section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). *See Certain Potassium Phosphate Salts From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 63722 (December 4, 2009). On February 12, 2010, the Department exercised its discretion to toll Import Administration deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. *See* Memorandum to the Record from Ronald Lorentzen, Deputy Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010." Based on this memorandum, the revised deadline for the preliminary determination of this investigation is now February 28, 2010. However, since this date falls on a weekend, the date of signature for this preliminary determination is March 1, 2010.

On February 18, 2010, Petitioners requested that the final determination of this CVD investigation be aligned with the final determination in the companion antidumping duty (AD) investigation, in accordance with section 705(a)(1) of the Act.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a United States industry. On November 9, 2009 the ITC transmitted its preliminary determination to the Department. On November 23, 2009, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States producing MKP is materially injured or threatened with material injury, and industries in the United States producing DKP and TKPP are threatened with material injury by reason of allegedly subsidized imports from the PRC of subject merchandise. *See ITC Salts Preliminary*. As noted above, the ITC found that there is no reasonable indication that an industry producing STPP is materially injured by reason of imports alleged to be subsidized by the PRC. *See ITC Salts Preliminary*.

Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

In addition to this CVD investigation, there is a companion AD investigation. *See Certain Sodium and Potassium Phosphate Salts From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 54024 (October 21, 2009). The CVD investigation and the AD investigation have the same scope with regard to the merchandise covered. As noted above, on February 18, 2010, the Petitioners submitted a letter requesting alignment of the final CVD determination with the final determination in the companion AD investigation of Certain Potassium Phosphate Salts from the People's Republic of China, in accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4). Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the due date for the final CVD determination with the due date for the final AD determination, which is currently scheduled to be issued no later than May 24, 2010.

Scope of the Investigation

The phosphate salts covered by this investigation include anhydrous MKP, anhydrous DKP and TKPP, whether anhydrous or in solution (collectively "phosphate salts").

TKPP, also known as normal potassium pyrophosphate, diphosphoric acid or tetrapotassium salt, is a potassium salt with the formula $K_4P_2O_7$. The CAS registry number for TKPP is 7320–34–5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0% P_2O_5 content. TKPP is classified under heading 2835.39.1000, Harmonized Tariff Schedule of the United States (HTSUS).

MKP, also known as potassium dihydrogen phosphate, KDP, or monobasic potassium phosphate, is a potassium salt with the formula KH_2PO_4. The CAS registry number for MKP is 7778–77–0. MKP is typically 22.7% phosphorus, 28.7% potassium and 52% P_2O_5. MKP is classified under heading 2835.24.0000, HTSUS.

DKP, also known as dipotassium salt, dipotassium hydrogen orthophosphate or potassium phosphate, dibasic, has a chemical formula of K_2HPO_4. The CAS registry number for DKP is 7758–11–4. DKP is typically 17.8% phosphorus, 44.8% potassium and 40% P_2O_5 content. DKP is classified under heading 2835.24.0000, HTSUS.

The products covered by this investigation include the foregoing phosphate salts in all grades, whether food grade or technical grade. The products covered by this investigation include anhydrous MKP and DKP without regard to the physical form, whether crushed, granule, powder or fines. Also covered are all forms of TKPP, whether crushed, granule, powder, fines or solution.

For purposes of the investigation, the narrative description is dispositive, not the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.

Scope Comments

As explained in the preamble to the Department's regulations, we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 21 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997); and *Initiation Notice*, 74 FR at 54779. No such comments were filed on the record of either this investigation or the companion antidumping duty investigation.

Period of Investigation

The period covered by this investigation (*i.e.*, the POI) is calendar year 2008 (January 1, 2008 through December 31, 2008).

Application of Facts Otherwise Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in a form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding or; (D) provides information that cannot be verified as provided by section 782(i) of the Act. In the instant case, the GOC did not respond to the Department's November 10, 2009 CVD investigation questionnaire and the three mandatory company respondents, Mupro, Aostar, and Anda, did not respond to the Department's December 04, 2009 CVD investigation questionnaire. As a result, the GOC and the three mandatory company respondents did not provide the requested information that is necessary for the Department to determine whether the mandatory company respondents benefitted from countervailable subsidies and to calculate a CVD rate for this preliminary determination. Therefore, in reaching this preliminary determination, pursuant to section 776(a)(2)(C) of the Act, the Department has based the CVD rates for Mupro, Aostar, and Anda on facts otherwise available.

Application of an Adverse Inference

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Because the GOC and the mandatory company respondents chose not to respond to the Department's CVD investigation questionnaire, the Department preliminarily determines that the GOC, Mupro, Aostar, and Anda did not cooperate to the best of their ability in this investigation and that, in selecting from among the facts available, an adverse inference is warranted (*i.e.*, adverse facts available (AFA)), pursuant to section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. In this case, no appropriate information was placed on the record of this investigation from which to select appropriate AFA rates for any of the subject programs, and, because this is an investigation, we have no previous segments of this proceeding from which to draw potential AFA rates. Therefore, we are applying the policy developed in prior CVD investigations of the PRC. *See, e.g., Sodium Nitrite From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 38981 (July 8, 2008) (*Sodium Nitrite from the PRC*) to the 16 programs under investigation.

Specifically, with regard to income tax reduction or exemption programs, information from the petition indicates that during the POI, the standard income tax for corporations in China was 30 percent; there was an additional local income tax rate of three percent. *See* the September 24, 2009 Letter to the Secretary of Commerce, "Petition for the Imposition of Antidumping and Countervailing Duties on Certain Sodium and Potassium Phosphate Salts from the People's Republic of China," Volume 4, Exhibit CVD–1. To determine the program rate for the five alleged income tax programs under which companies received either a reduction of the income tax rate, or an exemption from income tax, we have applied an adverse inference that Mupro, Aostar, and Anda each paid no income taxes during the POI. Therefore, the highest possible countervailable subsidy rate for the five national, provincial, and local income tax programs subject to this investigation combine to total 33 percent. Thus, we are applying a countervailable rate of 33 percent on an overall basis for the 5 income tax programs (*i.e.*, the five income tax programs combined provided a countervailable benefit of 33 percent). This 33 percent AFA rate does not apply to other types of tax programs.

For programs other than those involving income tax exemptions and reductions, we applied the highest non–*de minimis* rate calculated for the same or similar program in another PRC CVD investigation. Absent an above–*de minimis* subsidy rate calculated for the same or similar program, we applied the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the mandatory company respondents. *See, e.g., Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012, 37013 (July 27, 2009); *see also Sodium Nitrite from the PRC*.

For a discussion of the application of the individual AFA rates for programs preliminarily determined to be countervailable, *see* Memorandum to the File, "Application of Adverse Facts Available Rates for Preliminary Determination," dated concurrently with this notice (*PRC Salts Calculation Memorandum*). Attachment II of this memorandum contains relevant sections of *China CFS Final*; *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) and accompanying "Issues and Decision Memorandum;" and *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) and accompanying "Issues and Decision Memorandum," which contain the public information concerning subsidy programs, including the subsidy rates, upon which we are relying as AFA.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources

that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See SAA* at 870. The *SAA* provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The *SAA* emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See SAA* at 869–870.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company–specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as adverse facts available. *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996). In the instant case, no evidence has been presented or obtained that contradicts the relevance of the information relied upon in a prior China CVD investigation. Therefore, in the instant case, the Department preliminarily finds that the information used has been corroborated to the extent practicable.

Programs Preliminarily Determined to be Countervailable

As discussed above, as adverse facts available, we are making the adverse inference that Mupro, Aostar, and Anda each received countervailable subsidies under the 16 subsidy programs that the Department included in its initiation. For a description of these 16 programs, *see* the *Initiation Checklist*. For the identification of the source of each program's AFA rate for this countervailing duty investigation, *see PRC Salts Calculation Memorandum* at Attachment II.

Listed below are the AFA rates applicable to each program.

%	Subsidy Rate
Income Tax Rate Exemption/Reduction Programs.	
1. Two Free, Three Half Tax Exemption for Foreign Invested Enterprises (FIEs).	
2. Income Tax Subsidies for FIEs based on Geographic Location.	
3. Income Tax Exemption Programs for Export Oriented FIEs.	
4. Local Income Tax Exemptions or Reduction Programs for "Productive" FIEs.	
5. Reduced Income Tax Rate for High- and New–Technology Enterprises	33.00%
GOC Tax Credit Programs.	
6. Preferential Tax Policies for Research and Development by FIEs	1.51%
7. Income Tax Credit on Purchases of Domestically Produced Equipment	1.51%
GOC Grant Programs.	
8. Subsidies to Loss–Making State–Owned Enterprises (SOEs) by the GOCat the National Level	13.36%
9. Grants Pursuant to the State Key Technology Renovation Project Fund	13.36%
10. Grants Pursuant to the "Famous Brands" Program	13.36%
Provincial Grant Program.	
11. Subsidies to Loss–Making SOEs by the GOC at the Provincial Level	13.36%
Indirect Tax Exemption/Reduction Programs.	
12. Reduction in or Exemption from the Fixed Assets Investment Orientation Tax	1.51%
13. Value Added Tax (VAT) Refund for FIEs Purchasing Domestically Produced Equipment	1.51%
VAT and Tariff Exemption on Imported Equipment.	
14. VAT and Tariff Exemptions on Imported Equipment	1.51%
Preferential Export Lending.	
15. Discounted Loans for Export Oriented Industries (Honorable Industries)	1.76%
Export Restraints.	
16. Export Restraints on Yellow Phosphorus	13.36%

Summarizing these rates yields a total CVD subsidy rate of 109.11% *ad valorem*.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have assigned a subsidy rate to each of the three producers/exporters of the subject merchandise that were selected as mandatory company respondents in this CVD investigation. We preliminarily determine the total countervailable subsidy to be:

Producer/Exporter	Countervailable Subsidy Rate
Lianyungang Mupro Import Export Co Ltd.	109.11 percent *ad valorem*
Mianyang Aostar Phosphate Chemical Industry Co. Ltd.	109.11 percent *ad valorem*
Shifang Anda Chemicals Co. Ltd.	109.11 percent *ad valorem*
All–Others	109.11 percent *ad valorem*

With respect to the all–others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an all–others rate

for exporters and producers not individually investigated. In this case, the rate calculated for the three investigated companies is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which to determine an all–others rate. As a result, we have used the AFA rate assigned for Mupro, Aostar, and Anda as the all–others rate. This method is consistent with the Department's past practice. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot–Rolled Carbon Steel Flat Products From Argentina*, 66 FR 37007, 37008 (July 16, 2001); *see also Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India*, 68 FR 68356 (December 8, 2003); *see also Sodium Nitrite from the PRC.*

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of the subject merchandise from the PRC, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or the posting of a bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the information on which it relied to determine the subsidy rates for this preliminary determination within five days of its announcement. No party has submitted a notice of appearance on behalf of the GOC or the mandatory company respondents, and questionnaire responses were not submitted in this investigation by either the GOC or the three mandatory company respondents. Thus, the Department does not intend to conduct verification proceedings in this countervailing duty investigation. For these reasons, the due date for interested parties to submit case briefs will be 50 days from the date of publication of the preliminary determination. *See* 19 CFR 351.309(c)(i). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages, and a table of statutes, regulations, and cases cited pursuant to 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case briefs are filed in accordance with 19 CFR 351.309(d).

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request, pursuant to 19 CFR 351.301(c), within 30 days of the publication of this notice in the **Federal Register**, to the Assistant Secretary for Import Administration, Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Pursuant to 19 CFR 351.310(c), parties will be notified of the schedule for the hearing and parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants and; (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: March 1, 2010.

Carole A. Showers,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–4870 Filed 3–5–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT75

New England Fishery Management Council; Public Hearings

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

ACTION: Monkfish Fishery Management Plan Amendment 5; reschedule of public hearings.

SUMMARY: The New England Fishery Management Council (Council) has rescheduled two public hearings to solicit comments on proposals to be included in the Draft Amendment 5 to the Monkfish Fishery Management Plan (FMP).

DATES: Written comments must be received on or before 5 p.m. e.s.t., March 9, 2010. The public hearings will be held on March 8, 2010 and March 9, 2010. For specific dates and times, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Council will take comments at public meetings in Riverhead, NY and Lakewood, NJ. For specific locations, see **SUPPLEMENTARY INFORMATION.** Written comments should be sent to Patricia Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Comments may also be sent via fax to (978) 281–9135 or submitted via e-mail to *monkamendment5@noaa.gov* with "Monkfish Amendment 5 Public Hearing Comments" 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.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council's Monkfish Committee is holding public hearings for Amendment 5 to the Monkfish Fishery Management Plan (FMP). The primary purpose of this amendment is to address the new requirements of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act that the Council adopt Annual Catch Limits (ACLs) and Accountability Measures (AMs) and manage the fishery at long-term

sustainable levels. According to the Act, these measures must be adopted by 2011. Amendment 5 will also include revised biological and management reference points to bring the FMP into compliance with revised National Standard 1 Guidelines. Further, Amendment 5 will specify total allowable catch targets and associated days-at-sea (DAS) and trip limits for the directed fishery to supplant the current specifications that it adopted for the 2007–2009 fishing years along with an extension provision which will apply for the 2010 fishing year. Amendment 5 contains proposals to make modifications to the FMP to improve the Research Set-Aside (RSA) Program, to minimize bycatch resulting from trip limit overages, to accommodate those vessels fishing in groundfish sectors who would no longer be required to use their allocated groundfish DAS, to require all limited access monkfish vessels to use a VMS when on a monkfish DAS, and to allow the landing of monkfish heads.

The public hearing document, as well as the draft Amendment 5 document incorporating an Environmental Assessment, is available on the Monkfish page of the Council's website (*www.nefmc.org*) or from the Council office.

After the close of the public comment period, the Monkfish Oversight Committee and Industry Advisory Panel will review the comments and develop recommendations to the New England and Mid-Atlantic Fishery Management Councils on the measures to be submitted as final action for Amendment 5. The Councils will make their decisions in April, 2010 for submission to the National Marine Fisheries Service (NMFS). If approved by NMFS, Amendment 5 will take effect at the start of the 2011 fishing year.

The original public hearings were listed in the January 14, 2010 **Federal Register** (75 FR 2111) and the new dates, times, locations and telephone numbers of the hearings are as follows:

Monday, March 8, 2010 at 12:30 p.m.–Holiday Inn Express East End, 1707 Old Country Road, Riverhead, NY 11901; telephone: (631) 548–1000.

Tuesday, March 9, 2010 at 9 a.m.–Hilton Garden Inn, 1885 Route 70, Lakewood, NJ 08701; telephone: (732) 262–5232.

Special Accommodations

These hearings are 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: March 2, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–4733 Filed 3–5–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0023]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on April 7, 2010 unless comments are received which would result in a contrary determination.

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

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.
- *Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: March 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S650.30

SYSTEM NAME:

DRMS Surplus Sales Program Records (September 4, 2007; 72 FR 50672).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add ", as amended." after "(SSN)".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete second paragraph and replace with "DNSP Data Owner, Property Disposal Specialist (DNSP), Defense Reutilization and Marketing Service, DRMS–BBS, 74 Washington Avenue North, Battle Creek, Michigan 49037–3092."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information is provided by the subject individual. Bidder Identification Numbers are assigned sequentially by DAISY National Sales Program (DNSP). New bidders on Local Sales will receive a sequential number by adding them to the Bidder Master File on the Web, which feeds DNSP. Reutilization Modernization Program (RMP) will use the same sequential system assigned Bidder Identification Numbers. Debarment data is provided by either the DRMS Office of Counsel or by General Services Administration."

* * * * *

S650.30

SYSTEM NAME:

DRMS Surplus Sales Program Records.

SYSTEM LOCATION:

For Local Sales, DAISY National Sales Program (DNSP), and the Bidder Master File (BMF): Defense Reutilization and Marketing Service, ATTN: Chief, Sales Office, DRMS–BBS, 74 Washington Avenue North, Battle Creek, MI 49037–3092.

For the Reutilization Modernization Program (RMP): RMP, DLIS–XP, ATTN:

Program Manager, 74 Washington Avenue North, Battle Creek, MI 49037–3092

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, businesses, and organizations that have registered to participate in the DoD Surplus Sales Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, business and home addresses and telephone numbers, bidder identification and registration number, bidder status code, Social Security Number (SSN) or Taxpayer ID number, amounts paid, owed or refunded, data on bad checks, bid bond data, and bank guarantee code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 40 U.S.C. 101 *et seq.*, Federal Property and Administrative Services Act of 1949, as amended; 50 U.S.C. App. 2401 *et seq.*, Export Control; 41 CFR part 101–45; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Information is collected and maintained for the purpose of registering bidders for DRMS Surplus Sales; creating sales contracts; creating cash collection and refund vouchers; recording payments and property removal details; indebtedness; and other actions associated with the sales transaction.

Data may also be used by DoD law enforcement agencies responsible for auditing and investigating or enforcing criminal, civil, or administrative laws; the Defense Reutilization and Marketing Offices (DRMO) for the purpose of notifying bidders of upcoming surplus sales of potential interest to bidders; the Defense Finance and Accounting Service for the purpose of collecting and depositing payments owed to DRMS; and statistical data with all personal identifiers removed may be used by management for reporting or program management purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C 552a(b)(3) as follows:

To the General Services Administration for the purpose of adding and flagging bidder's records debarred from doing business with the Federal Government.

To the DRMS commercial sales venture partner(s) for the purpose of registering bidders for their surplus sales, creating sales contracts, creating cash collection and refund vouchers, recording payments and property removal details, indebtedness, and other actions associated with the sales transaction.

The DoD "Blanket Routine Uses" also apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (TIN) or Social Security Number (SSN), the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper records and/or on electronic storage media.

RETRIEVABILITY:

Individuals' name, business address, telephone number, Bidder Identification Number or any combination of the above.

SAFEGUARDS:

Access is limited to those DRMS and contractor personnel who use the records to perform official assigned duties. Technical controls are in place to restrict activity of users within the application; data owner verifies a need-to-know for each activity and assigns the candidate user to a group with authorization to perform specific actions.

Records are maintained in secure, limited access, or monitored work areas accessible only to authorized personnel. Central Processing Units are located in a physically controlled access area requiring either a badge or card swipe for entry. Workstations are controlled via Common Access Cards (CAC) with application specific generated forced password change protocols if the application itself is not CAC enabled. Passwords are tested for strength at the time of selection. Users are warned of the consequences of improperly accessing restricted databases and data misuse at each login, during staff meetings, and during separate Information Assurance and Privacy Act training. After hours, records are stored in locked file cabinets, locked rooms, or areas controlled by personnel screening. All file cabinets containing information subject to the Privacy Act of 1974 must have DLA Form 1461 affixed to the outside of the storage compartment. This form reads:

> The material/information contained herein falls within the purview of the Privacy Act of 1974 and will be safeguarded in accordance with the applicable systems of records notice and 32 CFR part 323.

RETENTION AND DISPOSAL:

Records have the following disposition instructions: (a) Sales contracts under $25,000—retain for 3 years after final payment/closure. (b) Sales contracts for $25,000 or more—retain for 6 years after final payment/closure. (c) Hazardous sales contracts of any monetary value—retain for 50 years after final payment/closure.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Sales Office, Disposition Management, DRMS–BBS (DAISY Local Sales), Defense Reutilization and Marketing Service, 74 Washington Avenue North, Battle Creek, Michigan 49037–3092.

DNSP Data Owner, Property Disposal Specialist (DNSP), Defense Reutilization and Marketing Service, DRMS–BBS, 74 Washington Avenue North, Battle Creek, Michigan 49037–3092.

RMP Program Manager, DLIS–XP, 74 Washington Avenue North, Battle Creek, Michigan 49037–3092.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Request should contain the individual's name, business address and

telephone number, and Bidder Identification Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Request should contain the individual's name, business address and telephone number, and Bidder Identification Number.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323; or may be obtained from the Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the subject individual. Bidder Identification Numbers are assigned sequentially by DAISY National Sales Program (DNSP). New bidders on Local Sales will receive a sequential number by adding them to the Bidder Master File on the Web, which feeds DNSP. Reutilization Modernization Program (RMP) will use the same sequential system assigned Bidder Identification Numbers. Debarment data is provided by either the DRMS Office of Counsel or by General Services Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–4819 Filed 3–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0024]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 7, 2010 unless comments are received which result in a contrary determination.

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

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is of make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the point of contact under **FOR FURTHER INFORMATION CONTACT.**

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: March 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S352.10

SYSTEM NAME:

Suggestion Files (March 28, 2007; 72 FR 14528).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters, Defense Logistics Agency, *Attn:* DHRC–P, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221 and the Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of records systems notices."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DOD for evaluation of a suggestion.

To Federal, State, and local agencies and private organizations to research and evaluate suggestions or to process award or recognition documents.

The DoD "Blanket Routine Uses" also apply to this system of records."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Defense Logistics Agency Suggestion Policy Office, Human Resources Program Implementation, *Attn:* DHRC–P, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221."

NOTIFICATION PROCEDURE:

Add as second paragraph "Inquiry should contain the individual's full name, address, type of award, suggestion description, and activity at which nomination or suggestion was submitted."

* * * * *

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

S352.10

SYSTEM NAME:

Suggestion Files

SYSTEM LOCATION:

Headquarters, Defense Logistics Agency, ATTN: DHRC–P, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221 and the Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of records systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted suggestions to improve the economy, efficiency, or operation of the Defense Logistics Agency and the Federal government.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's name, home address and telephone numbers, organization, background material and evaluations submitted in support of suggestion program, and award or recognition documents authorized for a suggestion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1124, Cash awards for disclosures, suggestions, inventions, and scientific achievements; and DoD Manual 1400.25–M, DoD Civilian Personnel Manual, subchapter 451, Awards.

PURPOSE(S):

Information is maintained to evaluate suggestions, to process award or recognition documents, and to prepare reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DOD for evaluation of a suggestion.

To Federal, State, and local agencies and private organizations to research and evaluate suggestions or to process award or recognition documents.

The DoD "Blanket Routine Uses" also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be maintained on paper and electronic storage media.

RETRIEVABILITY:

Records are retrieved by individual's name, and/or suggestion number.

SAFEGUARDS:

Access is limited to those individuals who require access to the records to perform official, assigned duties. Physical access is limited through the use of locks, guards, card swipe, and other administrative procedures. The electronic records deployed on accredited systems with access restricted by the use of login, password, and/or card swipe protocols. Employees are warned through screen log-on, protocols and period briefings of the consequences of improper access or use of the data. In addition, users are required to shutdown their workstations when leaving the work area. The Web-based files are encrypted in accordance with approved information assurance protocols. During non-duty hours, records are secured in access-controlled buildings, offices, cabinets or computer systems. Individuals granted access to the system of records receives Information Assurance and Privacy training.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after disapproval, completion of testing, or permanent implementation, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Logistics Agency Suggestion Policy Office, Human Resources Program Implementation, *Attn:* DHRC–P, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, address, type of award, suggestion description, and activity at which nomination or suggestion was submitted.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name, address, type of award, suggestion description, and activity at which nomination or suggestion was submitted.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject, DLA supervisors, and individuals who evaluate the suggestions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–4821 Filed 3–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0022]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 7, 2010 unless comments are received which result in a contrary determination.

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

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: March 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S200.30 CAI

SYSTEM NAME:

Reserve Affairs (November 16, 2004; 69 FR 67112).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "S200.30."

SYSTEM NAME:

Delete entry and replace with "Reserve Affairs Records Collection."

SYSTEM LOCATION:

Delete entry and replace with "Director, J–9, Joint Reserve Forces, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3627 Fort Belvoir, VA 22060–6221, and the Heads of the DLA Primary Level Field Activities. Mailing addresses may be obtained from the system manager below."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All Selected Reserve, Army, Marine Corps, Navy, and Air Force personnel assigned to Defense Logistics Agency (DLA) Reserve units and Individual Mobilization Augmentee (IMA) positions."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "The files contain full name, grade, Social Security Number (SSN), service, career specialty, position title, date of birth, commission date, promotion date, release date, medical/dental record information, benefits and allowances, pay records, security clearance, education, home address and civilian occupation of the individuals involved."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Part II, Personnel Generally; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; and E.O. 9397 (SSN), as amended."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Retrieved by last name and Social Security Number (SSN)."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director, J–9, Joint Reserve Forces, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3627, Fort Belvoir, VA 22060–6221 and the Heads of the DLA Primary Level Field Activities."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name and Social Security Number (SSN)."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name and Social Security Number (SSN)."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the system manager."

* * * * *

S200.30

SYSTEM NAME:

Reserve Affairs Records Collection.

SYSTEM LOCATION:

Director, J–9, Joint Reserve Forces, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3627 Fort Belvoir, VA 22060–6221, and the Heads of the DLA Primary Level Field Activities. Mailing addresses may be obtained from the system manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Selected Reserve, Army, Marine Corps, Navy, and Air Force personnel assigned to Defense Logistics Agency (DLA) Reserve units and Individual Mobilization Augmentee (IMA) positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files contain full name, grade, Social Security Number (SSN), service, career specialty, position title, date of birth, commission date, promotion date, release date, medical/dental record information, benefits and allowances, pay records, security clearance, education, home address and civilian occupation of the individuals involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel Generally; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The files are maintained to provide background information on individuals assigned to DLA and to document their assignment. Data is used in preparation of personnel actions such as reassignments, classification actions, promotions, scheduling, and verification of active duty and inactive duty training. The data is also used for management and statistical reports and studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records may be stored on paper and on electronic storage media.

RETRIEVABILITY:

Retrieved by last name and Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked office, or locked cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed 2 years after separation or release from mobilization, or after supersession or obsolescence, or after 5 years, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Director, J–9, Joint Reserve Forces, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3627, Fort Belvoir, VA 22060–6221 and the Heads of the DLA Primary Level Field Activities.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA Privacy Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the individual's full name and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data is provided by the subject individual and their Military Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–4822 Filed 3–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0021]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Logistics Agency proposes to delete a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 7, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by dock number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

The Defense Logistics Agency is proposing to delete a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S360.20

SYSTEM NAME:

Civilian Personnel Data System (October 9, 2001; 66 FR 51405).

REASON:

System notice is no longer necessary. Records are covered under the existing DoD-wide notice, DPR 34, entitled "Defense Civilian Personnel Data System" (April 21, 2006; 71 FR 20649).

[FR Doc. 2010–4824 Filed 3–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Interim Change to the Military Freight Traffic Unified Rules Publication (MFTURP) No. 1

AGENCY: Department of the Army, DoD.

SUMMARY: The Military Surface Deployment and Distribution Command (SDDC) is providing notice that it released an interim change to the MFTURP No. 1 on February 17, 2010. The interim change removes Motor Surveillance Service (MVS) from Item 107 and replaces Item 107 with Trailer Tracking Service (DCS). The change also updates Item 111, Satellite Motor Surveillance Service (SNS).

ADDRESSES: Submit comments to Publication and Rules Manager, Strategic Business Directorate, Business Services, 661 Sheppard Place, *Attn:* SDDC–OPM, Fort Eustis, VA 23604–1644. Request for additional information may be sent by e-mail to: *chad.t.privett@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Chad Privett, (757) 878–8161.

SUPPLEMENTARY INFORMATION:

Reference: Military Freight Traffic Unified Rules Publications (MFTURP) No. 1.

Background: The MFTURP No. 1 governs the purchase of surface freight transportation in the Continental United States (CONUS) by DoD using Federal Acquisition Regulation (FAR) exempt transportation service contracts.

Motor Surveillance Service (MVS) has been removed from the MFTURP–1 because it is a Transportation Protective Service (TPS) that is no longer used.

Trailer Tracking Service (DCS) is a new TPS that augments Satellite Monitoring Service (SNS) for Security Risk Category (SRC) I–IV motor shipments travelling via closed-box-van trailers. SNS only allows the Defense Transportation Tracking System (DTTS) to track a Transportation Service Provider's (TSP) tractor. With the addition of DCS, DTTS will now be alerted if the closed-box-van trailer has been unhooked from the tractor or if the trailer's door has been opened while in transit.

The Satellite Motor Surveillance Service verbiage has been updated in order to reflect current SNS operating procedures.

Miscellaneous: This publication, as well as the other SDDC publications, can be accessed via the SDDC Web site at: *http://www.sddc.army.mil/Public/*

Global%20Cargo%20Distribution/Domestic/Publications/.

C.E. Radford, III,

Division Chief, G9, Strategic Business Directorate.

[FR Doc. 2010–4814 Filed 3–5–10; 8:45 am]

BILLING CODE 3710–08–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2009–0828; FRL–9123–6]

Draft Report to Congress: Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less Than 79 Feet

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and information.

SUMMARY: This notice provides the public with notification that EPA has prepared a draft *Report to Congress: Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less than 79 feet.* EPA conducted the study required by Public Law 110–299 and is publishing this draft report to seek public comment prior to finalizing the report. This draft report presents the information required by Public Law 110–299 on the types of wastewater discharged from commercial fishing vessels and non-recreational vessels less than 79 feet in length. The draft report can be accessed in its entirety at *http://www.epa.gov/npdes/vessels*. This notice is being issued to obtain public comment on the draft report.

DATES: Comments must be received on or before April 7, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0208, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov* Attention Docket ID No. OW–2009–0208.
- *Mail:* Water Docket Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2009–0208. Please include a total of two copies in addition to the original.
- *Hand Delivery:* EPA Docket Center, EPA West; Room 3334, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW–2009–0208. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2009–0208. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Dr. Ryan Albert, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 566–0763; *fax number:* (202) 564–6392; or Robin Danesi, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1846; fax number: (202) 564–6392.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Today's notice does not contain or establish any regulatory requirements. Rather, it seeks public comment on EPA's draft Report to Congress on the Study of Discharges Incidental to the Normal Operation of Commercial Fishing Vessels and Other Vessels under 79 feet.

Today's notice will be of interest to the general public, State permitting agencies, other Federal agencies, and owners or operators of commercial fishing vessels or other non-recreational vessels that may have discharges incidental to their normal operation.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the notice by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

- *Follow directions*—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives; and provide reasons for your suggested alternatives.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

II. Why Did EPA Conduct the Study?

On July 31, 2008, Public Law (Pub. L.) 110–299 was signed into law. It generally provided a two-year moratorium for non-recreational vessels less than 79 feet in length and all commercial fishing vessels regardless of length, from the requirements of the National Pollutant Discharge Elimination System (NPDES) program to obtain a permit in order to authorize discharges incidental to the normal operation of those vessels. Additionally, Public Law 110–299 directed the United States Environmental Protection Agency (EPA) to study the impacts of discharges incidental to the normal operation of those vessels. Specifically, the law directs the agency to study and evaluate the impacts of:

(1) Any discharge of effluent from properly functioning marine engines;

(2) Any discharge of laundry, shower, and galley sink wastes; and

(3) Any other discharge incidental to the normal operation of a vessel.

Congress mandated that EPA include the following in the study:

(1) Characterizations of the nature, type, and composition of the discharges for:

a. Representative single vessels; and

b. Each class of vessels;

(2) Determinations of the volume (including average volumes) of those discharges for:

a. Representative single vessels;

b. Each class of vessels;

(3) A description of the locations (including the more common locations) of the discharges;

(4) Analyses and findings as to the nature and extent of the potential effects of the discharges, including determinations of whether the discharges pose a risk to human health, welfare, or the environment, and the nature of those risks;

(5) Determinations of the benefits to human health, welfare, and the environment from reducing, eliminating, controlling, or mitigating the discharges;

(6) Analyses of the extent to which the discharges are currently subject to regulation under Federal law or a binding international obligation of the United States.

The law expressly excludes certain discharges from the scope of the study: discharges from vessels owned and operated by the Armed Forces; discharges of sewage from vessels; and discharges of ballast water.

Congress may find the information in this report useful as it considers how best to address discharges incidental to the normal operation of those types of vessels studied. Currently, discharges incidental to the normal operation of certain other types of vessels are regulated under two different regimes in the Clean Water Act. First, incidental discharges from non-recreational, non-fishing vessels larger than 79 feet currently are regulated under the National Pollution Discharge Elimination System (NPDES) permitting program. Second, Congress has chosen to exempt incidental discharges from certain other vessels from NPDES permitting and instead provided for the development and implementation of national standards or management practices as appropriate. In particular, discharges incidental to the normal operation of vessels of the US armed forces are subject to the Uniform National Discharge Standard (UNDS) program established under Section 312 (n) of the Clean Water Act and are exempt from NPDES permitting. Additionally, due to passage of the Clean Boating Act in 2008, discharges incidental to the normal operation of recreational vessels also are exempt from NPDES permitting and will instead have to meet national best management requirements and performance standards established under Section 312 (o) of the Clean Water Act. Finally, in lieu of NPDES permitting, discharges of vessel sewage are subject instead to regulation under sections 312(b)–(m) of the Clean Water Act.

The objective of the draft report is to provide a scientifically informative, policy neutral document to inform Congress about discharge characteristics from the types of vessels studied. As Congress considers the result of this study, they may take into account various Federal regulatory regimes or other options. Congress may use the information in this report to extend the permitting moratorium for these vessels, to establish an alternate regulatory regime, or to do nothing, allowing the moratorium to expire, thereby requiring NPDES permitting coverage for these 140,000 vessel operators.

III. Overview of the Study's Methods and Findings

EPA estimates there are nearly 140,000 vessels in the United States subject to the permitting moratorium established under Public Law 110–299 (hereinafter referred to as "study vessels"). Approximately one-half of these vessels are commercial fishing vessels involved in activities such as fish catching (*e.g.*, longliner, shrimper, trawler) and charter fishing. The other half is distributed among a variety of vessel classes, including passenger vessels (*e.g.*, water taxis, tour boats, harbor cruise ships, dive boats), utility vessels (*e.g.*, tug/tow boats, research vessels, offshore supply boats), and freight barges.

In order to complete this study, EPA conducted literature reviews, sampled vessel discharges, and used existing data from other EPA data collection efforts and other government data sources to inform its analysis. To select specific vessel classes for sampling, EPA first developed a list of commercial vessel classes. Next, EPA eliminated those vessel classes believed to consist primarily of vessels greater than 79 feet in length, with the exception of commercial fishing vessels. Examples of vessel classes eliminated because of their size included cable laying ships, cruise ships, large ferries, and oil and petroleum tankers. With the exception of fishing vessels, vessels over 79 feet are outside the scope of the Act's permitting moratorium and are generally subject to EPA's existing Vessel General Permit. Next, EPA eliminated vessel classes that have historically been subject to NPDES permitting, including stationary seafood processing vessels and vessels that can be secured to the ocean floor for mineral or oil exploration. After screening out these vessel classes, EPA selected a subset of priority vessel classes to sample including commercial fishing boats, tug/tow boats, water taxis, tour boats, recreational vessels used for nonrecreational purposes, and industrial support boats less than 79 feet in length. EPA selected these vessel classes because they represent a cross section of discharges and have the potential to release a broad range of pollutants.

EPA sampled wastewater discharges and gathered shipboard process information from 61 vessels in nine vessel classes. These classes included fishing vessels, tugboats, water taxis, tour boats, towing/salvage vessels, small research vessels, a fire boat, and a

supply boat. EPA sampled more commercial fishing vessels than any other vessel class due to the large number of fishing vessels subject to the Public Law 110–299 permitting moratorium. Vessels were sampled in 15 separate cities and towns in nine States across multiple geographic regions, including New England, the Mid-Atlantic, the Gulf Coast, the Mississippi River, and Alaska.

EPA sampled a total of nine discharge types from the various vessel classes. These were bilgewater, stern tube packing gland effluent, deck runoff and/or washdown, fish hold effluent (both refrigerated seawater effluent and ice slurry), effluent from the cleaning of fish holds, graywater, propulsion and generator engine effluent, engine dewinterizing effluent, and firemain effluent.

EPA typically sampled one to four discharge types on each vessel, depending on applicability, accessibility, and logistical considerations. Vessel discharge samples were analyzed for a variety of pollutants, including classical pollutants such as biochemical oxygen demand (BOD5), total suspended solids (TSS), residual chlorine, and oil and grease; nutrients; total and dissolved metals; volatile and semivolatile organic compounds (VOCs and SVOCs); nonylphenols ethoxylates (used as surfactants in detergents), which are converted to nonylphenols (a class of endocrine-disrupting compounds); and pathogen indicators (*i.e.*, E. coli, enterococci, fecal coliforms).

EPA found that some vessel discharges from commercial fishing vessels and commercial vessels less than 79 feet in length may have the potential to impact the aquatic environment and/or human health or welfare. The discharges with the greatest potential to impact surface water quality include deck washdown, fish hold effluent, graywater, bilgewater, and marine engine effluent. Review of available literature also indicates that leachate from antifouling hull coatings used on certain vessels to prevent buildup of organisms, such as barnacles and algae, as well as underwater hull cleaning, also likely impact surface water quality, particularly in areas where a large number of vessels are concentrated in a relatively small water body.

Using the results obtained in this study, EPA used a simple model to evaluate how the nine vessel discharge types EPA sampled may impact water quality in a large, hypothetical harbor. Based on this evaluation, EPA determined that the incidental discharges from study vessels are not likely to solely cause an exceedance of any National Recommended Water Quality Criteria (NRWQC) to a relatively large water body. This finding suggests that these discharges are unlikely to pose acute or chronic exceedances of the NRWQC across an entire large water body. However, since many of the pollutants present in the vessel discharges were at end-of-pipe concentrations that exceeded an NRWQC, there is the potential for these discharges to contribute a water quality impact on a more localized scale. The study results indicate that total arsenic and dissolved copper are the most significant water quality concerns for the study vessels as a whole, and that they are more likely than other pollutants to contribute to exceedances of water quality criteria. This is especially true if there are other sources of pollutants or the receiving water already has high background concentrations.

IV. Request for Public Input and Comment

In addition to generally requesting comment on all aspects of the draft report, in order to maximize the quality of the report, EPA is specifically requesting comment on the following:

(1) Are there additional existing data or data sources which EPA should incorporate into or analyze in the final report? If so, please provide the specific data sets, papers, and/or citations EPA should consider.

(2) Did EPA accurately summarize how these vessels generate these discharges, and accurately summarize how mariners and fishermen manage the discharges (*e.g.*, fishermen in the Northeast holding bilgewater discharges until they are more than 3 nm from shore)?

(3) Did EPA present the information clearly and concisely? Do you have suggestions to better present these data for both technical and non-technical audiences?

(4) Should EPA consider other approaches to summarizing the data collected for this study, and if so, what specific alternative approaches are suggested?

(5) Are there additional data sources that identify specific environmental impacts that result from discharges incidental to normal operation of commercial fishing vessels and other non-recreational vessels less than 79 feet in length (other than ballast water)? If so, please provide the specific data sets, papers, and/or citations EPA should consider.

(6) Are there any additional existing data sources outlining usage patterns and discharge locations of commercial fishing vessels and other non-recreational vessels less than 79 feet in length that EPA should consider? If so, please provide specific data sets, papers, and or citations for EPA review.

(7) Has EPA sufficiently analyzed the extent to which the discharges are currently subject to regulation under Federal law or a binding international obligation of the United States? Does the report appropriately convey which discharges and vessel types are already regulated and unregulated?

Dated: March 1, 2010.

Peter A. Silva,

Assistant Administrator for Water.

[FR Doc. 2010–4828 Filed 3–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9124–1]

Science Advisory Board Staff Office; Notification of a Clean Air Scientific Advisory Committee (CASAC) NO_X & SO_X Secondary NAAQS Review Panel Meeting and CASAC Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee NO_X and SO_X Secondary National Ambient Air Quality Standards (NAAQS) Review Panel (CASAC Panel) to peer review EPA's *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NOx and SOx: First External Review Draft (March 2010).* The chartered CASAC will subsequently hold a public teleconference to review and approve the Panel's report.

DATES: The Panel meeting will be held Thursday, April 1, 2010 from 8:30 a.m. to 5 p.m. and Friday, April, 2, 2010 from 8:30 a.m. to 2 p.m. (Eastern Time). The chartered CASAC will meet by public teleconference from 10 a.m. to 1 p.m. on Monday, May 3, 2010 (Eastern Time).

ADDRESSES: The April 1 and 2, 2010 public meeting will take place at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC 27703, telephone (919) 941–6200. The May 3, 2010 public teleconference will be conducted by telephone 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 April 1 and 2, 2010 meeting may contact Ms. Kyndall Barry, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9868; fax (202) 233–0643; or e-mail at *barry.kyndall@epa.gov*. For information on the CASAC teleconference on May 3, 2010, please contact Dr. Holly Stallworth, Designated Federal Officer (DFO), at the above listed address; via telephone/voice mail (202) 343–9867 or e-mail at *stallworth.holly@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 (FACA), Public Law 92–463 5 U.S.C., App. 2, notice is hereby given that the CASAC NO_X & SO_X Secondary NAAQS Review Panel will hold a public meeting to provide advice on the policy implications of welfare standards for NO_X and SO_X and the chartered CASAC will hold a public teleconference to review and approve the Panel's draft report. 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 Panel and chartered CASAC 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 NO_X and SO_X. EPA is in the process of reviewing the secondary NAAQS for NO_X and SO_x. Welfare effects as defined in the CAA include, but are not limited to, effects on soils, water, wildlife, vegetation, visibility, weather, and climate, as well as effects on materials, economic values, and personal comfort and well-being.

The purpose of the April 1 and 2, 2010 meeting is to review EPA's *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X: First External Review Draft (March 2010)*. The *Policy Assessment* will serve to "bridge the gap" between the scientific information and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the standards. The first draft *Policy Assessment* builds upon the key scientific and technical information contained in the Agency's *Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Ecological Criteria* (EPA/600/R–08/082F) finalized December 2008 as well as the assessment document titled *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur-Main Content—Final Report* (September 2009). The Panel's deliberations on the first draft *Policy Assessment* will take place during the public meeting scheduled for April 1 and 2, 2010.

CASAC previously provided consultative advice on EPA's *Draft Plan for Review of the Secondary National Ambient Air Quality Standards for Nitrogen Dioxide and Sulfur Dioxide* during a public teleconference on October 30, 2007 (announced in 72 FR 57568–57569). On April 2 and 3, 2008, the Panel reviewed the *Integrated Science Assessment fox Oxides of Nitrogen and Sulfur—Environmental Criteria: First External Review Draft (December 2007)*, and provided consultative advice on EPA's *Scope and Methods Plan for Risk/Exposure Assessment (March 2008)*. The April 2 and 3, 2008 meeting was announced in 73 FR 10243–10244). The Panel reviewed the *Integrated Science Assessment fox Oxides of Nitrogen and Sulfur—Environmental Criteria: Second External Review Draft (August 2008)* and EPA's *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First Draft (August 2008)* as announced in 73 FR 53242–54243 on October 1 and 2, 2008. The Panel reviewed *Risk and Exposure. Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: Second Draft (June 2009)* as announced in 74 FR 29693–29694 on July 22 and 23, 2009. The CASAC advisory reports are available on the EPA Web site at *http://www.epa.gov/casac*.

Technical Contacts: Any questions concerning EPA's *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X: First External Review Draft (March 2010)* should be directed to Dr. Byran Hubbell, OAR, at 919–541–0621 or *hubbell.bryan@epa.gov*.

Availability of Meeting Materials: EPA–OAR's *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NO_X and SO_X: First External Review Draft (March 2010)* can be accessed at *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/index.html*. The agenda and other materials for the CASAC meetings will be posted on the SAB Web site at *http://www.epa.gov/casac*.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the April 1 and 2, 2010 meeting, interested parties should notify Ms. Kyndall Barry, DFO, by e-mail no later than March 26, 2010. To be placed on the public speaker list for the May 3, 2010 teleconference, interested parties should notify Dr. Holly Stallworth, DFO, by e-mail no later than April 23, 2010. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements:* Written statements for the April 1 and 2, 2010 meeting should be received in the SAB Staff Office by March 26, 2010, so that the information may be made available to the CASAC Panel for its consideration prior to this meeting. Written statements for the May 3, 2010 teleconference should be received in the SAB Staff Office by April 23, 2010. Written statements should be supplied to the appropriate DFO in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Barry 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: March 1, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–4818 Filed 3–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9123–8]

Proposed CERCLA Administrative Cost Recovery Settlement: Sherwood Motors, Inc.; West Site/Hows Corner Superfund Site, Plymouth, ME

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement of past response costs concerning the West Site/Hows Corner Superfund Site in Plymouth, Maine with the following settling party: Sherwood Motors, Inc. The settling party agrees to reimburse the Agency $5,000 in past costs. This settlement amount is based on the ability to pay of the settling party. This settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

DATES: Comments must be submitted by April 7, 2010.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100 (Mailcode: ORA18–1), Boston, Massachusetts 02109–3912 and should refer to: The West Site/Hows Corner Superfund Site, U.S. EPA Docket Number 01–2009–0092.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Sarah Meeks, Enforcement Counsel, U.S. Environmental Protection Agency, Region I, Office of Environmental Stewardship, 5 Post Office Square, Suite 100 (OES04–3), Boston, MA 02109–2023, (617) 918–1438.

Dated: January 6, 2010.

James T. Owens, III,

Director, Office of Site Remediation and Restoration.

[FR Doc. 2010–4826 Filed 3–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9124–2]

Science Advisory Board Staff Office; Request for Nominations of Experts To Augment the SAB Scientific and Technological Achievement Awards Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations for scientists and engineers to augment the SAB Scientific and Technological Achievement Awards (STAA) Committee.

DATES: Nominations should be submitted by March 29, 2010 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 343–9946; by fax at (202) 233–0643 or via e-mail at *hanlon.edward @epa.gov*. General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA's STAA Program was established in 1980 to recognize Agency scientists and engineers who published their work in the peer-reviewed literature. The STAA Program is an annual Agency-wide competition to promote and recognize scientific and technological achievements by EPA employees. The STAA program is administered and managed by EPA's Office of Research and Development (ORD). ORD requested SAB to review scientific publications nominated by EPA managers and make recommendations to the Administrator for STAA awards. The SAB STAA Committee, augmented with additional experts, will conduct this review and provide these recommendations.

In a **Federal Register** Notice (Volume 74, Number 22, Pages 6033–6034) published on February 4, 2009, the SAB Staff Office solicited public nominations to form the SAB STAA Committee that would review publications and make recommendations for STAA awards during 2009, 2010 and 2011. The 2009–2011 STAA Committee was formed in June 2009 and provided advice to the Administrator regarding the 2009 STAA awards.

Request for Nominations: There is a need to supplement the STAA Committee with additional expertise to review the 2010 and 2011 nominations. Accordingly, the SAB Staff Office is seeking nominations of nationally and internationally recognized scientists and engineers having experience and expertise in ecosystems and ecological risk assessment.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on this expert *ad hoc* Committee. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for "Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed" provided on the SAB Web site. The instructions can be accessed through the "Nomination of Experts" link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab*. To receive full consideration, nominations should include all of the information requested.

EPA's SAB Staff Office requests: contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position. educational

background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Mr. Edward Hanlon, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than March 29, 2010. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab*. Public comments on this List of Candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In augmenting this expert *ad hoc* Panel to provide advice and recommendations to the Administrator for STAA awards, the SAB Staff Office will consider public comments on the List of candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110-48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address *http://www.epa.gov/sab/pdf/epaform3110-48.pdf*.

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf*.

Dated: February 25, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–4820 Filed 3–5–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0743; FRL–8805–2]

Product Cancellation Order for Certain Pesticide Registrations

Correction

In notice document 2010–3537 beginning on page 8341 in the issue of February 24, 2010, make the following correction:

On page 8346, in the second column, the first sentence of the last paragraph should read:

"The registrant may sell and distribute existing stocks of product(s) listed in Table 1 until February 24, 2011."

[FR Doc. C1–2010–3537 Filed 3–5–10; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of four information collections described below.

DATES: Comments must be submitted on or before May 7, 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 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:* Interagency Charter & Federal Deposit Insurance Application.

OMB Number: 3064–0001.

Frequency of Response: Once.

Affected Public: Banks or savings associations wishing to become FDIC-insured depository institutions.

Estimated Number of Respondents: 252.

Estimated Time per Response: 125 hours.

Total Annual Burden: 31,500 hours.

General Description of Collection: The Federal Deposit Insurance Act requires proposed financial institutions to apply to the FDIC to obtain deposit insurance. This collection provides the FDIC with the information needed to evaluate the applications.

2. *Title:* Securities of Insured Nonmember Banks.

OMB Number: 3064–0030.
Form Number(s): 6800/03, 6800/04, and 6800/05.
Frequency of Response: On occasion.
Affected Public: Generally, any person subject to section 16 of the Securities Exchange Act of 1934 with respect to securities registered under 12 CFR part 335.
Estimated Number of Respondents: 1,333.
Estimated Time per Response: 0.6 hours.
Total Annual Burden: 1,100 hours.
General Description of Collection: FDIC bank officers, directors, and persons who beneficially own more than 10% of a specified class of registered equity securities are required to publicly report their transactions in equity securities of the issuer.

3. *Title:* Application to Establish Branch or to Move Main Office or Branch.
OMB Number: 3064–0070.
Form Numbers: None.
Frequency of Response: On occasion.
Affected Public: Insured financial institutions.
Estimated Number of Respondents: 1,540.
Estimated Time per Response: 5 hours.
Total Annual Burden: 7,700 hours.
General Description of Collection: Insured depository institutions must obtain the written consent of the FDIC before establishing or moving a main office or branch.

4. *Title:* CRA Sunshine.
OMB Number: 3064–0139.
Frequency of Response: On occasion.
Affected Public: Insured state nonmember banks and their affiliates, and nongovernmental entities and persons.
Estimated Number of Respondents: 62.
Estimated Time per Response: 2.43 hours.
Total Annual Burden: 501 hours.
General Description of Collection: This collection implements a statutory requirement imposing reporting, disclosure and recordkeeping requirements on some community investment-related agreements between insured depository institutions or affiliates, and nongovernmental entities or persons.

Request for Comment

Comments are invited on: (a) Whether the collection of information is 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 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; and (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. All comments will become a matter of public record.

Dated at Washington, DC, this 2nd day of March, 2010.
Federal Deposit Insurance Corporation.
Valerie J. Best,
Assistant Executive Secretary.
[FR Doc. 2010–4799 Filed 3–5–10; 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: March 2, 2010.
Federal Deposit Insurance Corporation.
Valerie J. Best,
Assistant Executive Secretary.

INSTITUTIONS IN LIQUIDATION
[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10188	Carson River Community Bank	Carson City	NV	2/26/2010
10189	Rainier Pacific Bank	Tacoma	WA	2/26/2010

[FR Doc. 2010–4798 Filed 3–5–10; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2010—06]

Filing Dates for the Pennsylvania Special Election in the 12th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Pennsylvania has scheduled a Special General Election on May 18, 2010, to fill the U.S. House seat in the 12th Congressional District held by the late Representative John P. Murtha.

Committees required to file reports in connection with the Special General Election on May 18, 2010, shall file a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; *Telephone:* (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Principal Campaign Committees.

All principal campaign committees of candidates who participate in the Pennsylvania Special General Election shall file a 12-day Pre-General Report on May 6, 2010, and a 30-day Post-General Report on June 17, 2010. (See chart below for the closing date for each report).

Note that these reports are in addition to the campaign committee's quarterly filings in April and July. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2010 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Pennsylvania Special General Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the Pennsylvania Special General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Pennsylvania Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates_2010.shtml.*

Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $16,000 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v).

CALENDAR OF REPORTING DATES FOR PENNSYLVANIA SPECIAL ELECTION COMMITTEES INVOLVED IN THE SPECIAL GENERAL (05/18/10) MUST FILE:

Report	Close of books [1]	Reg./cert.& overnight mailing deadline	Filing deadline
Pre-General	04/28/10	05/03/10	05/06/10
Pose-General	06/07/10	06/17/10	06/17/10
July Quarterly	06/30/10	07/15/10	07/15/10

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

Dated: March 2, 2010.

On behalf of the Commission.

Matthew S. Petersen,

Chairman, Federal Election Commission.

[FR Doc. 2010–4774 Filed 3–5–10; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

Cancellation

DATE AND TIME: Thursday, March 4, 2010, at 2 p.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This hearing has been cancelled.

AUDIT HEARING: The Jefferson Committee.

* * * * *

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Acting Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Signed: Darlene Harris,

Acting Secretary of the Commission.

[FR Doc. 2010–4772 Filed 3–5–10; 8:45 am]

BILLING CODE 6715–01–M

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 March 23, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Clarence D. Ballard, Winnsboro, Texas; to acquire voting shares of Sulphur Springs Bancshares, Inc., and thereby indirectly acquire voting shares of The City National Bank of Sulphur Springs, both of Sulphur Springs, Texas.

Board of Governors of the Federal Reserve System, March 3, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–4795 Filed 3–5–10; 8:45 am]

BILLING CODE 6210–01–S

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 March 22, 2010.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Patriot Financial Partners, GP, L.P.; Patriot Financial Partners, L.P.; Patriot Financial Partners Parallel, L.P.; Patriot Financial Partners, GP, LLC; Patriot Financial Managers, L.P.; Ira M. Lubert; W. Kirk Wycoff; and James J. Lynch, all of Philadelphia, Pennsylvania; to acquire voting shares of Central Valley Community Bancorp, and thereby indirectly acquire voting shares of Central Valley Community Bank, both of Fresno, California.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Olen Ray Hibbard and William Michael Thompson, both of Edmond, Oklahoma; as trustees of the Citizens Bancshares, Inc. Employee Stock Ownership Trust, Edmond, Oklahoma, to retain voting shares of Citizens Bancshares, Inc., and thereby indirectly retain voting shares of Citizens Bank of Edmond, both in Edmond, Oklahoma.

Board of Governors of the Federal Reserve System, March 2, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–4740 Filed 3–5–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 1, 2010.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Jane Kincaid LLC, Lexington, Kentucky; to become a bank holding company by acquiring 27.9 percent of the voting shares of Central Bancshares, Inc., Lexington, Kentucky, and thereby acquire voting shares of Central Bank & Trust Company, Lexington, Kentucky, Central Bank of Jefferson County, Louisville, Kentucky, and Salt Lick Deposit Bank, Owningsville, Kentucky.

In connection with this appliction, Applicant also has applied to acquire Central Bank, FSB, Nicholasville, Kentucky, and thereby engage in operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

2. Joan Kincaid LLC, Lexington, Kentucky; to become a bank holding company by acquiring 29.3 percent of the voting shares of Central Bancshares, Inc., Lexington, Kentucky, and thereby acquire voting shares of Central Bank & Trust Company, Lexington, Kentucky, Central Bank of Jefferson County, Louisville, Kentucky, and Salt Lick Deposit Bank, Owningsville, Kentucky.

In connection with this appliction, Applicant also has applied to acquire Central Bank, FSB, Nicholasville, Kentucky, and thereby engage in operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. CrossFirst Holdings, LLC, Overland Park, Kansas; to acquire up to 100 percent of the voting shares of Town & Country Bank, Leawood, Kansas.

Board of Governors of the Federal Reserve System, March 2, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–4739 Filed 3–5–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: Regulations To Implement SAMHSA's Charitable Choice Statutory Provisions—42 CFR parts 54 and 54a (OMB No. 0930–0242)—Revision

Section 1955 of the Public Health Service Act (42 U.S.C. 300x–65), as amended by the Children's Health Act of 2000 (Pub. L. 106–310) and sections 581–584 of the Public Health Service Act (42 U.S.C. 290kk *et seq.*, as added by the Consolidated Appropriations Act (Pub. L. 106–554)), set forth various provisions which aim to ensure that religious organizations are able to compete on an equal footing for Federal funds to provide substance abuse services. These provisions allow religious organizations to offer substance abuse services to individuals without impairing the religious character of the organizations or the religious freedom of the individuals who receive the services. The provisions apply to the Substance Abuse Prevention and Treatment Block Grant (SAPT BG), to the Projects for Assistance in Transition from Homelessness (PATH) formula grant program, and to certain Substance Abuse and Mental Health Services Administration (SAMHSA) discretionary grant programs (programs that pay for substance abuse treatment and prevention services, not for certain infrastructure and technical assistance activities). Every effort has been made to assure that the reporting, recordkeeping and disclosure requirements of the proposed regulations allow maximum flexibility in implementation and impose minimum burden.

No changes are being made to the regulations. This revision is for approval of the updated estimate of burden on respondents to provide the information required to be reported by 42 CFR part 54a.8(d) and 54.8(e), respectively, and to ascertain how they are implementing

the disclosure requirements of 54a.8(b) and 54.8(b), respectively. Information on how States comply with the requirements of 42 CFR part 54 was approved by the Office of Management and Budget (OMB) as part of the Substance Abuse Prevention and Treatment Block Grant FY 2008–2010 annual application and reporting requirements approved under OMB control number 0930–0080.

42 CFR Citation and Purpose	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hours
Part 54—States Receiving SAPT Block Grants and/or Projects for Assistance in Transition from Homelessness					
Reporting					
96.122(f)(5) Annual report of activities the State undertook to comply 42 CFR Part 54 (SAPT BG)	60	1	* 60	1	60
54.8(c)(4) Total number of referrals to alternative service providers reported by program participants to States (respondents).					
SAPT BG	7	*68	476	1	476
PATH	10	5	50	1	50
54.8 (e) Annual report by PATH grantees on activities undertaken to comply with 42 CFR Part 54	56	1	56	1	56
Disclosure					
54.8(b) State requires program participants to provide notice to program beneficiaries of their right to referral to an alternative service provider.					
SAPT BG	60	1	60	.05	3
PATH	56	1	56	.05	3
Recordkeeping					
54.6(b) Documentation must be maintained to demonstrate significant burden for program participants under 42 U.S.C. 300x–57 or 42 U.S.C. 290cc–33(a)(2) and under 42 U.S.C. 290cc–21 to 290cc–35	60	1	60	1	60
Part 54—Subtotal	116		818		708
Part 54a—States, local governments and religious organizations receiving funding under Title V of the PHS Act for substance abuse prevention and treatment services.					
Reporting					
54a.8(c)(1)(iv) Total number of referrals to alternative service providers reported by program participants to States when they are the responsible unit of government	25	4	100	* .083	8
54a(8)(d) Total number of referrals reported to SAMHSA when it is the responsible unit of government. (NOTE: This notification will occur during the course of the regular reports that may be required under the terms of the funding award.)	20	2	40	.25	10
Disclosure					
54a.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider	1,460	1	1,460	1	1,460
Part 54a—Subtotal	1,505		1,600		1,478
Total	1,621		2,418		2,186

* Average

Written comments and recommendations concerning the proposed information collection should be sent by April 7, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–5806.

Dated: March 1, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–4807 Filed 3–5–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0006]

International Conference on Harmonisation; Guidance on S9 Nonclinical Evaluation for Anticancer Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "S9 Nonclinical Evaluation for Anticancer Pharmaceuticals." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides recommendations for nonclinical studies for the development of pharmaceuticals, including both drugs and biotechnology derived products, intended to treat patients with advanced cancer. The recommendations describe the type and timing of nonclinical studies to support an investigational new drug application (IND) and the submission of a new drug application (NDA) or biologics license application (BLA). The guidance is intended to provide information on internationally accepted recommendations for nonclinical studies to facilitate the development of anticancer pharmaceuticals.

DATES: Submit written or electronic comments on agency guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send two self-addressed adhesive labels to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance*: John K. Leighton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 22, rm. 2204, Silver Spring, MD 20993–0002, 301–796–2330; or Mercedes Serabian, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–5377.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of February 17, 2009 (74 FR 7445), FDA published a notice announcing the availability of a draft guidance entitled "S9 Nonclinical Evaluation for Anticancer Pharmaceuticals." The notice gave interested persons an opportunity to submit comments by April 20, 2009.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in October, 2009.

The guidance provides guidance on recommendations for nonclinical studies for the development of pharmaceuticals, including both drugs and biotechnology derived products, intended to treat patients with advanced cancer. The recommendations describe the type and timing of nonclinical studies to support an IND and the submission of an NDA or BLA.

In response to comments received on the draft guidance, the guidance was revised to provide clarification of the following topics: (1) The intended patient population covered by the guidance, (2) inclusion of recovery groups for general toxicology studies, (3) additional nonclinical studies to support clinical dosing schedule changes, and (4) when impurities should be qualified. The guidance was revised to address the following additional topics: (1) Inclusion of electrocardiographic measurements as part of general toxicology studies, (2) the study design for reproduction toxicology assessment for biopharmaceuticals, (3) assessment of the safety of pharmaceutical combinations, and (4) photosafety assessments.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on the guidance. Submit a

single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

Dated: March 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–4841 Filed 3–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; "Modeling Immunity for Biodefense".

Date: April 6–7, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Regulatory T cells in Autoimmune and Inflammatory Diseases.

Date: April 30, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3118, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–0985, *vijhs@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 2, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4836 Filed 3–5–10; 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 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 Human Genome Research Institute Special Emphasis Panel; NHGRI MAP Review Teleconference Spring 2010.

Date: March 23, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NHGRI Twinrook Library, 5635 Fishers Lane, Suite 4076, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; LRP 2010 Teleconference.

Date: April 7, 2010.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NHGRI Twinbrook Library, 5635 Fishers Lane, Suite 4076, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 1, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4839 Filed 3–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Advisory Committee for Pharmaceutical Science and Clinical Pharmacology; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science and Clinical Pharmacology.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 13, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is 301–589–5200.

Contact Person: Anuja Patel, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Anuja.Patel@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 301–451–2539. Please call

the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On April 13, 2010, the committee will receive presentations from the Office of Generic Drugs and discuss two bioequivalence topics relevant to generic drug approval: (1) Revising the BE approaches for critical dose drugs and (2) the use of partial area under the curve (AUC) for the evaluation of abbreviated new drug applications for products with complex pharmacokinetic profiles. Bioequivalence refers to the evaluation of equivalence in the rate and extent of drug absorption between two preparations of the same drug. Critical dose drugs are medicines that require a narrow (or "critical") dose range to achieve and maintain their intended effects and to reduce serious adverse drug reactions. The "area under the curve" is the area under a plot of drug concentration in the bloodstream versus time; it is a measure of the extent of exposure to a drug after a dose is administered.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 30, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 22, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 23, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Anuja Patel at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 2, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–4812 Filed 3–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the 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 Eye Institute Special Emphasis Panel; NEI Clinical Grant Applications and Cooperative Agreements.

Date: April 12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Anne E Schaffner, PhD, Scientific Review Officer, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, Msc 9300, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4584 Filed 3–5–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 22, 2010, 8 a.m.to March 23, 2010, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on February 24, 2010, 75 FR 8371–8372.

The meeting will be held March 29, 2010 to March 30, 2010. The meeting time and location remain the same. The meeting is closed to the public.

Dated: February 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4589 Filed 3–5–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism, Initial Review Group Clinical, Treatment and Health Services Research Review Subcommittee.

Date: July 19–20, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Katrina L Foster, PhD, Scientific Review Officer, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2019, Rockville, MD 20852, 301–443–4032, *katrina@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891 Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: February 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4588 Filed 3–5–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Joint Meeting of the Arthritis Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Arthritis Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 12, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is 301–589–5200.

Contact Person: Anuja Patel, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Anuja.Patel@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512532 and 304512535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On May 12, 2010, the committees will discuss new drug application (NDA) 22–478, naproxcinod0 375 milligram capsule, sponsored by NicOx S.A., a non-steroidal anti-inflammatory drug (NSAID) product indicated for the treatment of the signs and symptoms of osteoarthritis.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 28, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 20, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 21, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Anuja Patel at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 2, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–4813 Filed 3–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Member Conflict Review, Program Announcement (PA) 07–318, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–3 p.m., March 22, 2010 (Closed).

Place: National Institute for Occupational Safety and Health (NIOSH), CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506, *telephone:* (304) 285–6143.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of "Member Conflict Review, PA 07–318."

Contact Person for More Information: Chris Langub, PhD, Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E74, Atlanta Georgia 30333; *Telephone:* (404) 498–2543.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 2, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–4877 Filed 3–5–10; 8:45 am]

BILLING CODE 4163–18–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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Medical Rehabilitation Research Resource.

Date: March 26, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Anne Krey, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute, of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301–435–6908.

(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: March 1, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4840 Filed 3–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Computational Biology, Image Processing, and Data Mining.

Date: March 18, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Denise Beusen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7806, Bethesda, MD 20892, (301) 435–1267, *beusend@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Healthcare Delivery and Clinical Science.

Date: March 24, 2010.

Time: 12 p.m. to 3:30 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: Katherine Bent, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, 301–435–0695, *bentkn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Biophysical and Biochemical Sciences.

Date: March 25–26, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Denise Beusen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7806, Bethesda, MD 20892, (301) 435–1267, *beusend@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Predoctoral Diversity.

Date: March 29–30, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046B, MSC 7892, Bethesda, MD 20892, 301–408–9655, *gubina@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 1, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4837 Filed 3–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; HIV/AIDS Interventions.

Date: March 23, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Enid Light, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–0322, *elight@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; HIV/AIDS Conflicts.

Date: March 24, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Enid Light, PhD. Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–0322, *elight@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 2, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–4817 Filed 3–5–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Funding Announcement Number: HHS–2010–IHS–TSGN–0001]

Tribal Self-Governance Program; Negotiation Cooperative Agreement

Announcement Type: New.

Catalog of Federal Domestic Assistance Number: 93.444.

Key Dates: Application Deadline Date: April 16, 2010. Review Date: May 14, 2010. Anticipated Start Date: June 14, 2010.

I. Funding Opportunity Description

The purpose of the Negotiation Cooperative Agreement is to provide resources to Tribes interested in participating in the Tribal Self-Governance Program (TSGP), as authorized by Public Law (Pub. L.) 106–260, the Tribal Self-Governance Amendments of 2000, and Title V of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended (Title V) (25 U.S.C. 458aaa–2(e)). The Negotiation Cooperative Agreement provides a Tribe with funds to help cover the expenses involved in preparing for and negotiating a compact and Funding Agreement (FA) with the Indian Health Service (IHS).

There is limited competition under this announcement because the authorizing legislation restricts eligibility to Tribes that meet specific criteria (Refer to Section III.1.A., Eligible Applicants in this announcement). The TSGP is designed to promote Self-Governance by enabling Tribes to assume control of IHS programs, services, functions, and activities (PSFAs), or portions thereof, through compacts negotiated with the IHS. This program is described at 93.444 in the Catalog of Federal Domestic Assistance (CFDA).

The Negotiation Cooperative Agreement provides resources to assist Indian Tribes with negotiation activities that include but are not limited to:

1. Determine what PSFAs, or portions therein, will be negotiated.

2. Identification of Tribal funding shares that will be included in the FA.

3. Development of the terms and conditions that will be set forth in the compact and FA.

Indian Tribes that have completed comparable health planning activities in previous years using Tribal resources are not required to receive a Self-Governance Planning Cooperative Agreement to be eligible to apply for a Negotiation Cooperative Agreement. The receipt of a Negotiation Cooperative Agreement award is not a prerequisite to enter the TSGP.

The Tribes eligible to compete for the Negotiation Cooperative Agreements include: Any Federally recognized Indian Tribe that has not previously received a Negotiation Cooperative Agreement; Federally recognized Indian Tribes that have previously received a Negotiation Cooperative Agreement, but chose not to enter the TSGP; and those Federally recognized Indian Tribes that received a Negotiation Cooperative Agreement, entered the TSGP, and would like to negotiate the assumption of new and expanded programs. If a Tribe applies for a Planning Cooperative Agreement within the same grant cycle, the Negotiation Cooperative Agreement will be awarded only upon the successful completion of the Planning Cooperative Agreement.

II. Award Information

Type of Awards: Cooperative Agreement.

Estimated Funds Available: The total amount identified for Fiscal Year (FY) 2010 is $240,000 for approximately eight Tribes. Awards under this announcement are subject to the availability of funds. In the absence of funding, the agency is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards: The estimated number of awards under the program to be funded is approximately eight.

Project Period: 12 months.

Award Amount: $30,000 per year.

Programmatic Involvement: Negotiation Cooperative Agreements entail substantial IHS programmatic involvement to establish a process through which Tribes can effectively approach the IHS to identify PSFAs and associated funding that could be incorporated into their programs.

The grantee roles and responsibilities are critical to the success of the TSGP and include:

- Determining the PSFAs and associated funding the Tribe may elect to assume.

• Preparing to discuss each PSFA in comparison to the current level of services provided, so that an informed decision can be made on new program assumption.

• Developing a compact and FA to submit to the Agency Lead Negotiator prior to negotiations. The Agency Lead Negotiator is the Federal official with the delegated authority of the IHS Director to negotiate compacts and funding agreements on behalf of the IHS.

III. Eligibility Information

1. Eligible Applicants

To be eligible for a Negotiation Cooperative Agreement under this announcement, an applicant must:

A. Be a Federally recognized Tribe as defined in 25 U.S.C. 450b(e). However, Alaska Native Villages or Alaska Native Village Corporations are not eligible if they are located within the area served by an Alaska Native regional health entity already participating in the Alaska Tribal Health Compact in 1998. By Congressional statute, the Native Village of Eyak, Eastern Aleutian Tribes, and the Council for Athabascan Tribal Governments have also been deemed Alaska Native regional health entities. Those Alaska Tribes not represented by a Self-Governance Tribal consortium FA within their area may still be considered to participate in the TSGP.

B. Submit a Tribal resolution or other official action from the appropriate governing body of each Indian Tribe to be served authorizing the submission of the Negotiation Cooperative Agreement application. An Indian Tribe that is proposing a Negotiation Cooperative Agreement affecting another Indian Tribe must include resolutions from all affected Tribes to be served. Tribal consortia applying for a Negotiation Cooperative Agreement shall submit individual Tribal Council Resolutions from all individual Tribes who's PSFAs will be compacted.

Draft resolutions are acceptable in lieu of an official resolution to submit with the application; however an official signed Tribal resolution must be received by the Division of Grants Operations (DGO), *Attn:* Kimberly M. Pendleton, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, by May 12, 2010, prior to the Objective Review Committee (ORC) evaluation on May 14, 2010. If the IHS DGO does not receive an official signed resolution by May 12, 2010, the application will be considered incomplete and will be returned to the applicant without further consideration.

*It is highly recommended that the Tribal resolution be sent by a delivery method that includes proof of receipt.

C. Demonstrate, for three fiscal years, financial stability and financial management capability, which is defined as no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribe's Self-Determination contracts or Self-Governance Funding Agreements with any Federal agency.

Applicants are required to submit complete annual audit reports for the three years prior to the year in which the applicant is applying for the Negotiation Cooperative Agreement. The applicants may scan an electronic copy of the documents and attach them to the online application. If the applicant determines that the audit reports are too lengthy, then the applicants may submit them separately via regular mail by the due date, April 16, 2010. Applicants sending in audit reports via regular mail must submit two copies of the complete audits for the three previous fiscal years under separate cover directly to the DGO, Attn: Kimberly M. Pendleton, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, referencing the Funding Opportunity Number, HHS–2010–IHS–TSGN–0001, as prescribed by Public Law 98–502, the Single Audit Act, as amended (*see* OMB Circular A–133, revised June 24, 1997, Audits of States, Local Governments, and Non-Profit Organizations). If the IHS DGO does not receive this documentation by April 16, 2010, then the application will be considered incomplete and will be returned to the applicant without further consideration. Applicants must include the grant tracking number assigned to their electronic submission from Grants.gov and the date submitted via Grants.gov in their cover letter transmitting the required complete audits for the previous three fiscal years.

2. Cost Sharing or Matching

The Negotiation Cooperative Agreement does not require matching funds or cost sharing to participate in the competitive grant process.

3. Other Requirements

A. This program is described at 93.444 in the CFDA.

B. If the application budget documents exceed the stated dollar amount that is outlined within this announcement, the application will be returned to the applicant without further consideration.

IV. Application and Submission Information

1. Applicant package may be found through Grants.gov (*www.Grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding.*

Information regarding this announcement may also be found on the Office of Tribal Self-Governance Web site at: *http://www.ihs.gov/NonMedicalPrograms/SelfGovernance/index.cfm?module=planning_negotiation.*

2. Content and Form of Application Submission:

A. The application must contain the following:

(1) Table of Contents.

(2) Abstract (one page) summarizing the project.

(3) Project Narrative (no more than seven pages) providing:

(a) Background information on the Tribe.

(b) Proposed scope of work, objectives, and activities that provide a description of what will be accomplished including a one-page Time Frame Chart.

(4) Application forms: SF–424, SF–424A, and SF–424B.

(5) Budget narrative and justification.

(6) Tribal Resolution (or official action).

(7) Appendices:

(a) Work plan for proposed objectives.

(b) Resumes or position descriptions of key staff.

(c) Contractor/Consultant resumes or qualifications and scope of work.

(d) Current Indirect Cost Agreement.

(e) Organizational Chart (optional).

(f) Audits.

B. The project and budget narratives must:

(1) Be single spaced.

(2) Be typewritten.

(3) Have consecutively numbered pages.

(4) Use black type not smaller than 12 characters per one inch.

(5) Be printed on one side only of standard size 8½" x 11" paper.

C. The seven-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions or letters of support, table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements:

All Federal-wide public policies apply to IHS grants with the exception of the Discrimination policy.

3. Submission Dates and Times:

Applications must be submitted electronically through Grants.gov by 12 midnight Eastern Standard Time (EST)

on April 16, 2010. Any application received after the application deadline will not be accepted for processing, and it will be returned to the applicant(s) without further consideration for funding.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via e-mail to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Tammy Bagley, Division of Grants Policy (DGP) (*tammy.bagley@ihs.gov*) at (301) 443–5204. Please be sure to contact Ms. Bagley at least ten days prior to the application deadline. Please do not contact the DGP until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGP as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained. The waiver must be documented in writing (e-mails are acceptable), before submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGO (Refer to Section VII for grant contact information). Paper applications that are submitted without a waiver will be returned to the applicant without review or further consideration. Late applications will not be accepted for processing, will be returned to the applicant, and will not be considered for funding.

4. Intergovernmental Review:

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions:

A. Each Negotiation Cooperative Agreement shall not exceed $30,000.

B. The available funds are inclusive of direct and appropriate indirect costs.

C. Only one Negotiation Cooperative Agreement will be awarded per applicant per grant cycle.

D. Pre-award costs are not allowable without prior approval from the awarding agency. All pre-award costs are incurred at the recipient's risk.

6. Electronic Submission Requirements:

The preferred method for receipt of applications is electronic submission through Grants.gov. In order to submit an application electronically, please go to *http://www.Grants.gov* and select the "Apply for Grants" link on the home page. Download a copy of the application package on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline (exact date April 6, 2010).

Please be reminded of the following:

- Please search for the application package in Grants.gov (*http://www.Grants.gov*) by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
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- If it is determined that a waiver is needed, you must submit a request in writing (e-mails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov*. Please include a clear justification for the need to deviate from our standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGO grants official (Refer to Section VII) by the deadline date, April 16, 2010.
- You must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications. Audits being sent separately must be received by the due date, April 16, 2010. Although draft Tribal resolutions may be submitted with the application, an official signed Tribal resolution must be received by May 12, 2010, prior to the ORC review on May 14, 2010.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.
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- E-mail applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a unique nine-digit identification number provided by D&B, which uniquely identifies your entity. The DUNS number is site specific; therefore each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, you may access it through the following Web site *http://fedgov.dnb.com/webform* or to expedite the process call (866) 705–5711.

Another important fact is that applicants must also be registered with the Central Contractor Registration (CCR) and a DUNS number is required before an applicant can complete their CCR registration. Registration with the CCR is free of charge. Applicants may register online at *http://www.ccr.gov* or by calling (866) 606–8220. Additional information regarding the DUNS, CCR, and Grants.gov processes can be found at: *www.Grants.gov*.

V. Application Review Information

1. Criteria

A. Demonstration of Previous Planning Activities (30 points).

Has the Indian Tribe determined the PSFAs it will assume? Has the Indian Tribe determined it has the administrative infrastructure to support the assumption of the PSFAs? Are the results of what was learned or is being learned during the planning process clearly stated?

B. Thoroughness of Approach (25 points).

Is a specific narrative provided regarding the direction the Indian Tribe plans to take in the TSGP? How will the Tribe demonstrate improved health and

services to the community it serves? Are proposed time lines for negotiations indicated?

C. Project Outcome (25 points).

What beneficial contributions are expected or anticipated for the Tribe? Is information provided on the services that will be assumed? What improvements will be made to manage the health care system? Are Tribal needs discussed in relation to the proposed programmatic alternatives and outcomes which will serve the Tribal community?

D. Administrative Capabilities (20 points).

Does the Indian Tribe clearly demonstrate knowledge and experience in the operation and management of health programs? Is the internal management and administrative infrastructure of the applicant described?

2. Review and Selection Process

In addition to the criteria in Section V.1., applications are considered according to the following:

A. Application Submission

(1) The applicant and proposed project type is eligible in accordance with this cooperative agreement announcement.

(2) The application is not a duplication of a previously funded project.

(3) The application narrative, forms, and materials submitted meet the requirements of the announcement, allowing the review panel to undertake an in-depth evaluation.

B. Competitive Review of Eligible Applications

Applications will undergo an initial pre-screening by the DGO. The pre-screening will assess whether applications that meet the eligibility requirements are complete, responsive, and conform to criteria outlined in this program announcement. The applications that meet the minimum criteria will be reviewed for merit by the ORC based on the evaluation criteria. The ORC is composed of both Tribal and Federal reviewers, appointed by the IHS, to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated by each reviewer on the basis of the evaluation criteria listed in Section V.1. The reviewers will use the criteria outlined in this announcement to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TSGP funding is not sufficient to support all approved applications. Applications scored by the ORC at 60 points and above will be recommended for approval and forwarded to the DGO for cost analysis and further recommendation. The program official will forward the approval list to the IHS Director for final review and approval. Applications scoring below 60 points will be disapproved.

Note: In making final selections, the IHS Director will consider the ranking factors and the status of the applicant's three previous years' single audit reports. The comments from the individual reviewers that participate in the ORC will be recommendations only. The IHS Director will make the final decision on awards.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document, signed by the Grants Management Officer, and serves as the official notification of the grant award. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA will be mailed via postal mail to each entity that is approved for funding under this announcement. Applicants who are approved but unfunded or disapproved based on their Objective Review score will receive a copy of the Final Executive Summary which identifies the weaknesses and strengths of the application submitted. Any correspondence other than the NoA announcing to the Project Director that an application was selected is not an authorization to begin performance.

2. Administrative Requirements

Cooperative Agreements are administered in accordance with the following documents:

A. The criteria as outlined this Program Announcement.

B. Program and Administrative Regulations:

- Program Regulations, 42 CFR 136.101 *et seq.*
- 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.

C. Grants Policy:

- HHS Grants Policy Statement, January 2007.

D. Cost Principles:

- Title 2: Grant and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87).

E. Audit Requirements:

- Audits of States, Local Governments, and Non-profit Organizations (OMB Circular A–133).

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with the HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate is provided to the DGO. Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation (*http://rates.psc.gov/*) and the Department of the Interior National Business Center (1849 C St., NW., Washington, DC 20240) (*http://www.aqd.nbc.gov/services/ICS/aspx*). If your organization has questions regarding the indirect cost policy, please contact the DGO at (301) 443–5204 to request assistance.

4. Reporting Requirements

Grantees must submit the reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active cooperative agreement, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

A. Progress Report. Program progress reports are required to be submitted semi-annually, within 30 days after the

budget period ends, and will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Report. Semi-annual financial status reports must be submitted within 30 days after the budget period ends. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form (SF) 269 (long form) will be used for financial reporting and the final SF–269 must be verified from the grantee's records on how the value was derived.

C. Federal Cash Transaction Reports are due every calendar quarter to the Division of Payment Management (DPM), Payment Management Branch. Please refer to the DPM Web site (*http://www.dpm.psc.gov/*) for additional guidance. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. IHS Agency Contact(s)

1. Questions on the programmatic issues may be directed to: Anna Old Elk, Program Analyst, Office of Tribal Self-Governance, *Telephone No.:* (301) 443–7821, *Fax No.:* (301) 443–1050, *E-mail: anna.oldelk@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Kimberly M. Pendleton, Grants Management Officer, Division of Grants Operations, *Telephone No.:* (301) 443–5204, *Fax No.:* (301) 443–9602, *E-mail: kimberly.pendleton@ihs.gov.*

VIII. Other Information

The Public Health Service (PHS) strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Dated: March 1, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–4854 Filed 3–5–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Self-Governance Program Planning Cooperative Agreement; Announcement Type: New Funding Announcement Number: HHS–2010–IHS–TSGP–0001

Catalog of Federal Domestic Assistance Number: 93.444.

DATES: Key Dates: Application Deadline Date: April 16, 2010. Review Date: May 14, 2010. Anticipated Start Date: June 14, 2010.

I. Funding Opportunity Description

The purpose of the Planning Cooperative Agreement is to provide resources to Tribes interested in participating in the Tribal Self-Governance Program (TSGP), as authorized by Public Law 106–260, the Tribal Self-Governance Amendments of 2000, and Title V of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended (Title V) (25 U.S.C. 458aaa–2(e)). The Planning Cooperative Agreement enables a Tribe to gather information on the current types of programs, services, functions, and activities (PSFAs) and related funding available at the Service Unit, Area, and Headquarters levels as well as determine the organizational preparation related to the administration of health programs.

There is limited competition under this announcement because the authorizing legislation restricts eligibility to Tribes that meet specific criteria (Refer to Section III.1.A., *Eligible Applicants* in this announcement). The TSGP is designed to promote Self-Governance by enabling Tribes to assume control of Indian Health Service (IHS) PSFAs, or portions thereof, through compacts negotiated with the IHS. This program is described at 93.444 in the Catalog of Federal Domestic Assistance (CFDA).

Indian Tribes that have completed comparable health planning activities in previous years using Tribal resources are not required to receive a Self-Governance Planning Cooperative Agreement to be eligible to participate in the TSGP. The receipt of a Planning Cooperative Agreement award is not a prerequisite to enter the TSGP.

The Tribes eligible to compete for the Planning Cooperative Agreements include: Any Federally recognized Indian Tribe that has not previously received a Planning Cooperative Agreement; Federally recognized Indian Tribes that have previously received Planning Cooperative Agreements but chose not to enter the TSGP; and those Federally recognized Indian Tribes that received a Planning Cooperative Agreement, entered the TSGP, and would like to plan for the assumption of new and expanded programs. Tribes are also eligible to apply for and receive a Negotiation Cooperative Agreement within the same grant cycle contingent upon completion of planning activities.

II. Award Information

Type of Awards: Cooperative Agreement.

Estimated Funds Available: The total amount identified for Fiscal Year (FY) 2010 is $600,000 for approximately eight Tribes. Awards under this announcement are subject to the availability of funds. In the absence of funding, the agency is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards: The estimated number of awards to be funded is approximately eight.

Project Period: 12 months.

Award Amount: $75,000 per year.

Programmatic Involvement: Planning Cooperative Agreements entail substantial IHS programmatic involvement to establish a basic understanding of PSFAs and associated funding at the Service Unit, Area, and Headquarters levels.

The IHS roles and responsibilities include:

- Providing a description of PSFAs and associated funding at all levels, including funding formulas and methodologies related to determining Tribal shares.
- Identifying IHS staff to consult with applicants on methods currently used to manage and deliver health care.
- Providing applicants with statutes, regulations and policies that provide authority for administering IHS programs.

The grantee roles and responsibilities are critical to the success of the TSGP and include:

- Researching and analyzing the complex IHS budget to gain a thorough understanding of funding distribution at all levels and to determine which PSFAs the Tribe may elect to assume.

• Establishing a process by which Tribes can effectively approach the IHS to identify programs and associated funding which could be incorporated into their current programs.

• Determining the Tribe's share of each PSFA and evaluating the current level of health care services being provided to make an informed decision on new program assumption(s).

III. Eligibility Information

1. Eligible Applicants

To be eligible for a Planning Cooperative Agreement under this announcement, an applicant must:

A. Be a Federally recognized Tribe as defined in 25 U.S.C. 450b(e). However, Alaska Native Villages or Alaska Native Village Corporations are not eligible if they are located within the area served by an Alaska Native regional health entity already participating in the Alaska Tribal Health Compact in 1998. By Congressional statute, the Native Village of Eyak, Eastern Aleutian Tribes, and the Council for Athabascan Tribal Governments have also been deemed Alaska Native regional health entities. Those Alaska Tribes not represented by a Self-Governance Tribal consortium Funding Agreement (FA) within their area may still be considered to participate in the TSGP.

B. Submit a Tribal resolution or other official action from the appropriate governing body of each Indian Tribe to be served authorizing the submission of the Planning Cooperative Agreement application. Tribal Consortia applying for a Tribal Self-Governance Planning Cooperative Agreement shall submit Tribal Council Resolutions from each Tribe in the consortium. Draft resolutions are acceptable in lieu of an official signed resolution to submit with the application; however, an official signed Tribal resolution must be received by the Division of Grants Operations (DGO), Attn: Kimberly M. Pendleton, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, by May 12, 2010, prior to the Objective Review Committee (ORC) evaluation on May 14, 2010. If the IHS DGO does not receive an official signed resolution by May 12, 2010, then the application will be considered incomplete and will be returned without consideration.

*It is highly recommended that the Tribal resolution be sent by a delivery method that includes proof of receipt.

C. Demonstrate, for three fiscal years, financial stability and financial management capability, which is defined as no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribe's Self-Determination contracts or Self-Governance Funding Agreements with any Federal agency. Applicants are required to submit complete annual audit reports for the three fiscal years prior to the year in which the applicant is applying for the Planning Cooperative Agreement. The applicants may scan an electronic copy of the documents and attach them to the online application. If the applicant determines that the audit reports are too lengthy, then the applicants may submit them separately via regular mail by the due date, April 16, 2010. Applicants sending in audits via regular mail must submit two copies of the complete audits for the three previous fiscal years under separate cover directly to the DGO, Attn: Kimberly M. Pendleton, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, referencing the Funding Opportunity Number, HHS–2010–IHS–TSGP–0001, as prescribed by Public Law 98–502, the Single Audit Act, as amended (see OMB Circular A–133, revised June 24, 1997, Audits of States, Local Governments, and Non-Profit Organizations). If the IHS DGO does not receive this documentation by April 16, 2010, then the application will be considered incomplete and will be returned to the applicant without further consideration. Applicants must include the grant tracking number assigned to their electronic submission from Grants.gov and the date submitted via Grants.gov in their cover letter transmitting the required complete audits for the previous three fiscal years.

2. Cost Sharing or Matching

The Tribal Self-Governance Planning Cooperative Agreement announcement does not require matching funds or cost sharing to participate in the competitive grant process.

3. Other Requirements

A. This program is described at 93.444 in the CFDA.

B. If application budget documents exceed the stated dollar amount that is outlined within this announcement, the application will be returned to the applicant without further consideration.

IV. Application and Submission Information

1. Application package and detailed instructions for this announcement may be found through Grants.gov (*http://www.grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding.*

Information regarding this announcement may also be found on the Office of Tribal Self-Governance Web site at: *http://www.ihs.gov/NonMedicalPrograms/SelfGovernance/index.cfm?module=planning_negotiation.*

2. Content and Form of Application Submission:

A. The application must contain the following:

(1) Table of Contents.

(2) Abstract (one page) summarizing the project.

(3) Project Narrative (no more than seven pages) providing:

(a) Background information on the Tribe.

(b) Proposed scope of work, objectives, and activities that provide a description of what will be accomplished including a one-page Time Frame Chart.

(4) Application forms: SF–424, SF–424A, and SF–424B.

(5) Budget narrative and justification.

(6) Tribal Resolution (or official action).

(7) Appendices:

(a) Résumés or position descriptions of key staff.

(b) Contractor/Consultant résumés or qualifications and scope of work.

(c) Current Indirect Cost Rate Agreement.

(d) Organizational Chart (optional).

(e) Audits.

B. The project and budget narratives must:

(1) Be single spaced.

(2) Be typewritten.

(3) Have consecutively numbered pages.

(4) Use black type not smaller than 12 characters per one inch.

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C. The seven page limit for the narrative does not include the work plan, standard forms, Tribal resolutions or letters of support, table of contents, budget, budget justifications, narratives, and/or other appendix items.

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address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Tammy Bagley, Division of Grants Policy (DGP) (*tammy.bagley@ihs.gov*) at (301) 443–5204. Please be sure to contact Ms. Bagley at least ten days prior to the application deadline. Please do not contact the DGP until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGP as soon as possible.

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4. Intergovernmental Review:

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5. Funding Restrictions:

A. Each planning cooperative agreement shall not exceed $75,000, including direct and appropriate indirect costs.

B. Only one planning cooperative agreement will be awarded per applicant per grant cycle.

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- If it is determined that a waiver is needed, you must submit a request in writing (e-mails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov*. Please include a clear justification for the need to deviate from our standard electronic submission process.
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- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the IHS.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will retrieve your application from Grants.gov. The DGO will not notify applicants that the application has been received.
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Another important fact is that applicants must also be registered with the Central Contractor Registration (CCR) and a DUNS number is required before an applicant can complete their CCR registration. Registration with the CCR is free of charge. Applicants may register online at *http://www.ccr.gov* or by calling (866) 606–8220. Additional information regarding the DUNS, CCR, and Grants.gov processes can be found at: *http://www.Grants.gov*.

V. Application Review Information

1. Criteria

A. Goals and Objectives of the Project (30 points).

Are the goals and objectives measurable and consistent with the purpose of the program and the needs of the people to be served, and are they achievable within the proposed time frame?

B. Organizational Capabilities and Qualifications (25 points).

Describe the organizational structure of the Tribe and its ability to manage the proposed project. Include resumes or position descriptions of key staff showing requisite experience and expertise and, where applicable, include resumes and scope of work for consultants that demonstrate experience and expertise relevant to the project.

C. Methodology (20 points).

Describe fully and clearly the methodology and activities that will be used to accomplish the goals and objectives of the project.

D. Budget and Budget Justification (15 points).

Submit a line-item budget with a narrative justification for all

expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative.

E. Management of Health Program(s) (10 points).

Does the applicant propose an improved approach to managing the health program(s) and indicate how the delivery of quality health services will be maintained under self-governance?

2. Review and Selection Process

In addition to the evaluation criteria in Section V.1., applications are considered according to the following:

A. Application Submission:

(1) The applicant and proposed project type is eligible in accordance with this cooperative agreement announcement.

(2) Abstract, narrative, budget, required forms, appendices and other material submitted meet the requirements of the announcement, allowing the review panel to undertake an in-depth evaluation.

B. Competitive Review of Eligible Applications:

Applications will undergo an initial prescreening by the DGO. The prescreening will assess whether applications that meet the eligibility requirements are complete, responsive, and conform to criteria outlined in this program announcement. The applications that meet the minimum criteria will be reviewed for merit by the ORC based on the evaluation criteria. The ORC is composed of both Tribal and Federal reviewers, appointed by the IHS, to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated by each reviewer on the basis of the evaluation criteria listed in Section V.1. The reviewers use the criteria outlined in this announcement to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TSGP funding is not sufficient to support all approved applications. Applications scored by the ORC at 60 points and above will be recommended for approval and forwarded to the DGO for cost analysis and further recommendation. The program official will forward the approval list to the IHS Director for final review and approval. Applications scoring below 60 points will be disapproved.

Note: In making final selections, the IHS Director will consider the ranking factors and the status of the applicant's three previous years' single audit reports. The comments from the individual reviewers that participate in the ORC will be recommendations only. The IHS Director will make the final decision on awards.

IV. Award Administration Information

Award Notices:

The Notice of Award (NoA) is a legally binding document, signed by the Grants Management Officer, and serves as the official notification of the grant award. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA will be mailed via postal mail to each entity that is approved for funding under this announcement. Applicants who are approved but unfunded or disapproved based on their Objective Review score will receive a copy of the Final Executive Summary which identifies the weaknesses and strengths of the application submitted. Any correspondence other than the NoA announcing to the Project Director that an application was selected is not an authorization to begin performance.

2. Administrative Requirements:

Cooperative Agreements are administrated in accordance with the following documents:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations:

- 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.

C. Grants Policy:

- HHS Grants Policy Statement, January 2007.

D. Cost Principles:

- Title 2: Grant and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87).

E. Audit Requirements:

- Audit of States, Local Governments, and Non-profit Organizations (OMB Circular A–133).

3. Indirect Costs:

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with the HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate is provided to the DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation (*http://rates.psc.gov/*) and the Department of the Interior National Business Center (1849 C St., NW., Washington, DC 20240) (*http://www.aqd.nbc.gov/services/ICS.aspx*). If your organization has questions regarding the indirect cost policy, please contact the DGO at (301) 443–5204 to request assistance.

4. Reporting Requirements:

Grantees must submit the reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

A. Progress Report. Program progress reports are required to be submitted semi-annually, within 30 days after the budget period ends, and will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Report. Semi-annual financial status reports must be submitted within 30 days after the budget period ends. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form (SF) 269 (long form) will be used for financial reporting and the

final SF–269 must be verified from the grantee's records on how the value was derived.

C. Federal Cash Transaction Reports are due every calendar quarter to the Division of Payment Management (DPM), Payment Management Branch. Please refer to the DPM Web site (*http://www.dpm.psc.gov/*) for additional guidance. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. IHS Agency Contact(s)

1. Questions on the programmatic issues may be directed to: Anna Old Elk, Program Analyst, Office of Tribal Self-Governance, *Telephone No.:* (301) 443–7821, *Fax No.:* (301) 443–1050, *E-mail: anna.oldelk@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Kimberly M. Pendleton, Grants Management Officer, Division of Grants Operations,*Telephone No.:* (301) 443–5204, *Fax No.:* (301) 443–9602, *E-mail: kimberly.pendleton@ihs.gov.*

VIII. Other Information

The Public Health Service (PHS) strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Dated: March 3, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–4834 Filed 3–5–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Assessment Prepared for Proposed Cape Wind Energy Project in Nantucket Sound, MA

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of the Availability of an Environmental Assessment (EA) and Draft Finding of No New Significant Impact (FONNSI) for Public Review and Comment.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal regulations that implement the National Environmental Policy Act (NEPA), announces the availability for public review and comment of an EA and Draft FONNSI prepared by MMS for the Cape Wind Energy Project proposed for Nantucket Sound, Massachusetts. On January 16, 2009, the MMS announced the release of the Final Environmental Impact Statement (FEIS) for the Cape Wind Energy Project. The FEIS assessed the physical, biological, and social/human impacts of the proposed project and 13 alternatives, including a no-action alternative (i.e., the project is not built), and proposed mitigation.

The MMS has identified new information that has become available since the publication of the FEIS in January 2009 that pertains to the proposed project, the feasibility of alternatives to the proposed project, and to some of the resources that were analyzed in the FEIS. The MMS used an environmental assessment (EA) to determine whether it needs to supplement its existing analysis under the National Environmental Policy Act (NEPA). This EA, in accordance with CEQ regulations (40 CFR 1501.3(b) and 40 CFR 1502.9), examines whether the new information indicates that there have been "substantial changes in the proposed action" or "significant new circumstances or information" that either were not fully discussed or did not exist at the time the FEIS was prepared that are relevant to environmental concerns and have a bearing on the proposed action or its impacts. MMS researched and reviewed new information obtained from the scientific/technical literature, government reports and actions, intergovernmental coordination and communications, required consultations, and comments made during two comment periods offered after the FEIS was circulated to determine if any assumptions, data or analysis related to resources should be reevaluated or if the new information would alter conclusions of the FEIS. This includes new information in the January 13, 2010, MMS Documentation of Section 106 Finding of Adverse Effect (Revised) (Revised Finding), and the comments received during a comment period on this document. No new information was found that would necessitate a reanalysis of range of the alternatives or the kinds, levels or locations of the impacts by the Proposed Action upon biologic, physical, socioeconomic or cultural resources. The analyses, potential impacts, and conclusions detailed in the FEIS remain applicable and unchanged. Therefore, MMS has determined that a supplemental EIS is not required and proposes to issue the attached FONNSI. MMS seeks public comment on the analysis, findings and conclusions in the proposed EA and Draft FONNSI.

DATES: The comment period for the EA/Draft FONNSI document closes April 7, 2010.

FOR FURTHER INFORMATION CONTACT: James F. Bennett, Chief, Environmental Assessment Branch, Minerals Management Service, 381 Elden Street MS–4042, Herndon, Virginia 20170.

SUPPLEMENTARY INFORMATION:

Cape Wind Energy Project Description

In November 2001, Cape Wind Associates, LLC, applied for a permit from the U.S. Army Corps of Engineers (USACE) under the Rivers and Harbors Act of 1899 to construct an offshore wind power facility on Horseshoe Shoal in Nantucket Sound, Massachusetts. Following the adoption of the Energy Policy Act of 2005 (EPAct) and its associated amendments to the Outer Continental Shelf Lands Act (OCSLA), the Department of the Interior was given statutory authority to issue leases, easements, or rights-of-way for renewable energy projects on the Outer Continental Shelf (OCS). Accordingly, Cape Wind Associates, LLC, submitted an application to MMS in 2005 to construct, operate, and eventually decommission an offshore wind power facility on Horseshoe Shoal in Nantucket Sound, Massachusetts. The project calls for 130, 3.6± megawatt (MW) wind turbine generators, each with a maximum blade height of 440 feet, to be arranged in a grid pattern in 25 square miles of Nantucket Sound, offshore of Cape Cod, Martha's Vineyard, and Nantucket Island. With a maximum electric output of 468 megawatts and an average anticipated output of 182 megawatts, the facility is projected to generate up to three-quarters of the Cape and Islands' electricity needs. Each of the 130 wind turbine generators would generate electricity independently. Solid dielectric submarine inner-array cables (33 kilovolt) from each wind turbine generator would interconnect within the array and terminate on an electrical service platform, which would serve as the common interconnection point for all of the wind turbines. The proposed submarine transmission cable system (115 kilovolt) from the electric service platform to the landfall location in

Yarmouth is approximately 12.5 miles in length (7.6 miles of which falls within Massachusetts' territorial waters).

Nantucket Sound is a roughly triangular body of water generally bound by Cape Cod, Martha's Vineyard, and Nantucket Island. Open bodies of water include Vineyard Sound to the West and the Atlantic Ocean to the East and the South. Nantucket Sound encompasses between 500–600 square miles of ocean, most of which lies in Federal waters. The Cape Wind Energy Project would be located completely on the OCS in Federal waters, aside from transmission cables running through Massachusetts waters ashore. For reference, the northernmost turbines would be approximately 5.2 miles (8.4 km) from Point Gammon on the mainland; the southernmost turbines would be approximately 11 miles (17.7 km) from Nantucket Island (Great Point); and the westernmost turbines would be approximately 5.5 miles (8.9 km) from the island of Martha's Vineyard (Cape Poge).

Public Comment Procedures: The EA can be accessed online at: *http://www.mms.gov/offshore/RenewableEnergy/CapeWind.htm.* Comments on the EA and FONNSI should be mailed or hand carried to the Minerals Management Service, Attention: James F. Bennett, 381 Elden Street, Mail Stop 4042, Herndon, Virginia 20170–4817. Envelopes or packages should be marked "Cape Wind Energy Project Environmental Assessment Document." The MMS will also accept comments submitted electronically through the Web page at Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter docket ID MMS–2010–OMM–0006, then click "Search." Under the tab "View By Docket Folder" you can submit public comments for this EA. The MMS will post all comments.

Public Comment Procedures: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 3, 2010.

L. Renee Orr,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2010–4926 Filed 3–4–10; 11:15 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2010–N041; 81331–1334–8TWG–W4]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a TAMWG meeting, which is open to the public.

DATES: TAMWG will meet from 9 a.m. to 5 p.m. on Wednesday, March 24, 2010.

ADDRESSES: The meeting will be held at the Trinity County Library, 211 Main St., Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: *Meeting information:* Randy A. Brown, TAMWG Designated Federal Officer, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; *telephone:* (707) 822–7201. *Trinity River Restoration Program (TRRP) information:* Jennifer Faler, Acting Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; *telephone:* (530) 623–1800; *e-mail: mhamman@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the TAMWG. The meeting will include discussion of the following topics:

- 2010 flow schedule;
- TRRP budget;
- Integrated Habitat Assessment;
- Outmigrant monitoring;
- Channel rehabilitation program;
- Hatchery operations review;
- Executive director's review;
- Executive director's report;
- TAMWG recommendations and status of previous recommendations; and
- Annual election of TAMWG officers.

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: March 2, 2010.

Randy A. Brown,

Designated Federal Officer, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. 2010–4806 Filed 3–5–10; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–474 and 731–TA–1176 (Preliminary)]

Drill Pipe and Drill Collars from China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and, 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of drill pipe and drill collars, provided for in subheadings 7304.22.00, 7304.23.30, 7304.23.60, and 8431.43.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of China.[2]

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun dissenting.

Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

Effective December 31, 2009, a petition was filed with the Commission and Commerce by VAM Drilling USA Inc., Houston, TX; Rotary Drilling Tools, Beasley, TX; Texas Steel Conversions, Inc., Houston, TX; TMK IPSCO, Downers Grove, IL; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC, Pittsburgh, PA, alleging that an industry in the United States is threatened with material injury by reason of LTFV and subsidized imports of drill pipe and drill collars from China. Accordingly, effective December 31, 2009, the Commission instituted countervailing duty investigation No. 701–TA–474 and antidumping duty investigation No. 731–TA–1176 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 6, 2010 (75 FR 877). The conference was held in Washington, DC, on January 21, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on February 22, 2010. The views of the Commission are contained in USITC Publication 4127 (March 2010), entitled *Drill Pipe and Drill Collars from China: Investigation Nos. 701–TA–474 and 731–TA–1176 (Preliminary).*

Issued: March 2, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–4746 Filed 3–5–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–667; Investigation No. 337–TA–673]

In the Matter of Certain Electronic Devices, Including Handheld Wireless Communications Devices; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigations in Their Entirety

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. 55C) in consolidated Inv. Nos. 337–TA–667 and 337–TA–673, *Certain Electronic Devices Including Handheld Wireless Communications Devices*, granting a motion to terminate the consolidated investigations in their entirety on the basis of settlement agreements.

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 Inv. No. 337–TA–667 ("the 667 Investigation") on January 23, 2009, based on a complaint filed by Saxon Innovation, LLC of Tyler, Texas ("Saxon"). 74 FR 4231. The complaint, as amended and supplemented, 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 electronic devices, including handheld wireless communications devices, by reason of infringement of certain claims of U.S. Patent Nos. 5,235,635 ("the '635 patent"); 5,530,597 ("the '597 patent"); and 5,608,873 ("the '873 patent"). The complaint further alleges the existence of a domestic industry related to each patent. The Commission's notice of investigation named various respondents, including Nokia Corporation of Espoo, Finland and Nokia Inc. of Irving, Texas (collectively "Nokia"); High Tech Computer Corp. of Taoyuan, Taiwan and HTC America, Inc. of Bellevue, Washington (collectively "HTC"); Research In Motion Ltd. of Waterloo, Ontario and Research In Motion Corp. of Irving, Texas (collectively "RIM"); and Palm, Inc. of Sunnyvale, California ("Palm").

The Commission instituted Inv. No. 337–TA–673 ("the 673 Investigation") on March 31, 2009, based on a complaint filed by Saxon. 74 FR 14578–9. The complaint, as amended and supplemented, 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 electronic devices, including handheld wireless communications devices by reason of infringement of certain claims of the '635 patent, the '597 patent, and the '873 patent. The complaint further alleges the existence of a domestic industry related to each patent. The Commission's notice of investigation named as respondents Samsung Electronics Co., Ltd. of Seoul, Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Telecommunications America, LLP of Richardson, Texas (collectively "Samsung").

On April 23, 2009, the ALJ issued Order No. 28 in the 667 investigation and Order No. 8 in the 673 investigation, consolidating the investigations. On May 13, 2009, the Commission determined not to review this consolidation.

On April 28, 2009, the Commission determined not to review an ID granting a joint motion filed by Saxon and HTC to terminate the 667 investigation as to respondent HTC. On July 13, 2009, the Commission determined not to review an ID granting a joint motion filed by Saxon and Nokia to terminate the consolidated investigations as to respondent Nokia. On October 22, 2009, the Commission determined not to review an ID granting a joint motion filed by Saxon and RIM to terminate the investigations as to respondent RIM. All

terminations were granted pursuant to Commission Rule 210.21(b) (19 CFR 210.21(b)).

On January 29, 2010 Saxon and respondents Samsung and Palm jointly moved to terminate the consolidated investigations in their entirety based upon settlement agreements between the remaining parties in the investigation. On February 4, 2010, the Commission investigative attorney filed a response in support of the motion. On February 12, 2010, the ALJ issued the subject ID, granting the joint motion to terminate the investigations in their entirety pursuant to Commission Rule 210.21(b). No petitions for review 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: March 2, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–4791 Filed 3–5–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on March 1, 2010, a proposed consent decree ("proposed decree") in the *United States of America* v. *DEGs of Narrows, LLC.*, Civil Action No. 7:10CV00085 was lodged with the United States District Court for the Western District of Virginia.

In this action the United States sought civil penalties for alleged violations of the Clean Air Act at the DEGs of Narrows, LLC facility in Narrows, Virginia. The complaint alleged that DEGs of Narrows, LLC violated the Clean Air Act, Sections 110, 112 and 502 of the CAA, 42, U.S.C. 7410, 7412, and 7661a, by failing to comply with the Commonwealth of Virginia's State Implementation Plan requirements for the Virigina NOx Budget Trading Program in 9 VAC 5–140 *et seq,* failing to comply with the Title V permit for the facility, and failing to comply with leak detection and repair requirements for the facility's methylene chloride system. Under the terms of the proposed decree, DEGS of Narrows, LLC will pay a civil penalty of $310,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *DEGs of Narrows, LLC.,* D.J. Ref. 90–5–2–1–09375.

The proposed decree may be examined at the Office of the United States Attorney, 310 1st Street, SW., Room 906, Roanoke, Virginia 24011, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. During the public comment period, the proposed decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. 2010–4790 Filed 3–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act, the Clean Water Act, the Emergency Planning and Community Right-To-Know Act, and the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 2, 2010, a proposed Consent Decree ("Decree") in *United States* v. *AES Thames, LLC,* Civil Action No. 3:10cv281, was lodged with the United States District Court for the District of Connecticut.

The Decree resolves claims of the United States against AES Thames, LLC under the Clean Air Act, 42 U.S.C. 7401–7671q, the Clean Water Act, 33 U.S.C. 1251–1387, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001–11050, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601–9675, for injunctive relief and recovery of civil penalties in connection with AES Thames, LLC's operation of a coal-fired power plant located in Montville, Connecticut. The Decree requires AES Thames to pay $140,000 in civil penalties and institute injunctive relief in the form of operator training and implementation of additional spill control measures and safeguards.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *AES Thames, LLC,* Civil Action No. 3:10cv281 D. Conn.), D.J. Ref. 90–5–2–1–08991.

The Decree may be examined at the Office of the United States Attorney, District of Connecticut, New Haven Office, Connecticut Financial Center, 157 Church Street, Floor 23, New Haven, CT 06510, and at U.S. EPA Region I, 5 Post Office Square, Boston, MA 02109. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–4789 Filed 3–5–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Energy Employees Occupational Illness Compensation Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Energy Employees Occupational Illness Compensation Program Act Forms (Forms EE–1, EE–2, EE–3, EE–4, EE–7, EE–8, EE–9, EE–10, EE–11A, EE–11B, EE–12, EE–13, EE–16, EE–20). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 7, 2010.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, e-mail *Alvarez.Vincent@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Workers' Compensation Programs (OWCP) is the primary agency responsible for the administration of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.* The Act provides for timely payment of compensation to covered employees and, where applicable, survivors of such employees, who sustained either "occupational illnesses" or "covered illnesses" incurred in the performance of duty for the Department of Energy and certain of its contractors and subcontractors. The Act sets forth eligibility criteria for claimants for compensation under Part B and Part E of the Act, and outlines the various elements of compensation payable from the Fund established by the Act. The information collections in this ICR collect demographic, factual and medical information needed to determine entitlement to benefits under the EEOICPA. This information collection is currently approved for use through August 31, 2010.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks approval for the revision of this information collection in order to carry out its responsibility to determine a claimant's eligibility for compensation under the EEOICPA.

Type of Review: Revision.

Agency: Office of Workers' Compensation Programs.

Title: Energy Employees Occupational Illness Compensation Act Forms (various).

OMB Number: 1240–0197.

Agency Number: EE–1, EE–2, EE–3, EE–4, EE–7, EE–8, EE–9, EE–10, EE–11A, EE–11B, EE–12, EE–13, EE–16 and EE–20.

Affected Public: Individuals or households; Business or other for-profit.

Total Respondents: 57,175.

Total Responses: 57,384.

Estimated Total Burden Hours: 21,729.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $22,781.37.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 2, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2010–4793 Filed 3–5–10; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities: Extension of a Currently Approved Information Collection with Non-Substantive Changes; Comment Request

ACTION: 60-day notice of information collection under review: ETA Form 232, Domestic Agricultural In-Season Wage Report, and ETA Form 232–A, Wage Survey Interview Record; OMB Control No. 1205–0017.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning forms ETA 232 and ETA 232–A *Domestic Agricultural In-Season Wage Report* and *Wage Survey Interview Record*. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 7, 2010.

ADDRESSEE: William L. Carlson, Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, Room C4312, 200 Constitution Ave., NW., Washington, DC 20210; by phone

at (202) 693–3010 (this is not a toll-free number); by fax at (202) 693–2768; or by e-mail at *ETA.OFLC.Forms@dol.gov* subject line: ETA Form 232.

SUPPLEMENTARY INFORMATION:

I. Background: The information collection is required by the Wagner-Peyser Act codified at 20 CFR part 653, which cover the requirements for the acceptance and handling of intrastate and interstate job clearance orders seeking workers to perform agricultural or food processing work on a less than year round basis. Section 653.501 states, in pertinent part, that employers must assure that the "wages and working conditions are not less than the prevailing wages and working conditions among similarly employed agricultural workers in the area of intended employment or the applicable Federal or State minimum wage, whichever is higher." Also, regulations for the temporary employment of alien agricultural workers in the United States, (20 CFR, part 655, subpart B) promulgated under section 218 of the Immigration and Nationality Act (INA) as amended, require employers to pay the workers "at least the adverse effect wage rate in effect at the time the work is performed, the prevailing hourly wage rate, or the legal federal or State minimum wage rate, whichever is highest." The vehicle for establishing the prevailing wage rate is ETA Form 232, *The Domestic Agricultural In-Season Wage Report*. This Report contains the prevailing wage finding based on data collected by the States from employers in a specific crop area using the ETA Form 232–A.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to wage rates for various crop activities.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Domestic Agricultural In-Season Wage Report and Wage Survey Interview Record.

OMB Number: 1205–0017.

Agency Number(s): ETA Form 232 and ETA Form 232–A.

Recordkeeping: On occasion.

Affected Public: Businesses or other for-profits and States, local, or tribal governments.

Total Respondents: 38,855.

Estimated Total Burden Hours: 16,301.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 2nd day of March 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–4796 Filed 3–5–10; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,157]

FCI USA, LLC, Including On-Site Leased Workers From Manpower, Inc., Mount Union, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 22, 2010, applicable to workers of FCI USA, LLC, including on-site leased workers from Manpower, Inc., Mount Union, Pennsylvania. The notice will be published soon in the **Federal Register**.

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 the production of electrical components for various communications devices, personal computers, and auto dashboards.

The review shows that on February 21, 2008, a certification of eligibility to apply for adjustment assistance was issued for all workers of FCI USA, Inc., Mount Union, Pennsylvania, separated from employment on or after September 28, 2007 through February 21, 2010. The notice was published in the **Federal Register** on March 7, 2008 (73 FR 12466).

In order to avoid an overlap in worker group coverage, the Department is amending the December 22, 2008 impact date established for TA–W–73,157, to read February 22, 2010.

The amended notice applicable to TA–W–73,157 is hereby issued as follows:

All workers of FCI USA, LLC, including on-site leased workers from Manpower, Inc., Mount Union, Pennsylvania, who became totally or partially separated from employment on or after February 22, 2010, through January 22, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC. this 22nd day of February 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–4744 Filed 3–5–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Office of Apprenticeship, Notice of Town Hall Meeting on Federal Regulations for Equal Employment Opportunity in Apprenticeship and Training

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of town hall meetings.

SUMMARY: The Employment and Training Administration's (ETA) Office of Apprenticeship (OA), U.S. Department of Labor (DOL), is giving notice of three town hall meetings and one on-line webinar to allow interested individuals an opportunity to provide feedback on and suggestions for revising the current regulations for Equal Employment and Opportunity in Apprenticeship and Training codified at

Title 29 Code of Federal Regulations (CFR) part 30.

Notice of intention to attend the stakeholder meeting: OA requests that you submit a notice of intention to attend (*i.e.*, to participate or observe) the stakeholder meetings no later than three business days prior to the meeting date.

DATES: The town hall meetings will be held on:

1. March 18, 2010, 10 a.m. to 12 p.m., Washington, DC;
2. March 23, 2010, 10 a.m. to 12 p.m., Oakland, California;
3. March 25, 2010, 10 a.m. to 12 p.m., Chicago, Illinois; and
4. April 7, 2010, 2 to 3 p.m., Eastern Standard Time, via an on-line webinar.

ADDRESSES: The town hall meeting locations are:

1. March 18, 2010, 10 a.m. to 12 p.m., The Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001;
2. March 23, 2010, 10 a.m. to 12 p.m., The James Irvine Conference Center, Plaza A, 353 Frank Ogawa Plaza, Oakland, California 94612;
3. March 25, 2010, 10 a.m. to 12 p.m., University Center, 525 S. State Street, Chicago, Illinois 60605; and
4. April 7, 2010, 2 p.m. to 3 p.m., Eastern Standard Time for webinar hosted on the DOL ETA Web site at: *http://www.workforce3one.org.*

Submit notice of intention to attend or present an oral statement at a town hall meeting to Carol Johnson, Coffey Consulting, LLC, at 301–907–0900, or by e-mail to *cjohnson@coffeyconsultingllc.com.* Written statements may be sent to the Employment and Training Administration, Office of Apprenticeship, 200 Constitution Avenue NW., Room N5311, Washington, DC 20210, Attention: Mr. John V. Ladd, or on-line at *www.regulations.gov.* For detailed requirements related to these submissions, see the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Mr. John Ladd, Administrator, Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue, NW., Washington, DC 20210. *Telephone:* (202) 693–2796, (this is not a toll-free number); and e-mail: *oa.administrator@dol.gov.*

SUPPLEMENTARY INFORMATION: The National Apprenticeship Act of 1937 authorizes the U.S. Department of Labor to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices. 29 U.S.C. 50. The responsibility for formulating and promoting these labor standards lies with OA. As part of its duties, OA registers apprenticeship programs that meet certain minimum labor standards. Those standards, set forth at 29 CFR parts 29 and 30, are intended to provide for more uniform training of apprentices and to promote equal opportunity. In October 2008, OA published newly amended part 29 regulations, which set forth labor standards to safeguard the welfare of apprentices by prescribing policies and procedures concerning (1) the registration, cancellation, and deregistration of apprenticeship programs and agreements; (2) the recognition of State Apprenticeship Agencies; and (3) matters relating thereto (73 FR 64402, Oct. 29, 2008). These regulations can be accessed on OA's Web site at *http://www.doleta.gov/oa/pdf/FinalRule29CFRPart29.pdf.*

DOL is now in the process of drafting a Notice of Proposed Rulemaking (NPRM) to update and strengthen the equal employment opportunity (EEO) requirements under the part 30 regulations, which were last amended in 1978, and to ensure that the regulations align with the recent revisions to the part 29 regulations, as announced in the Department's Semiannual Agenda Of Regulations (74 FR 4, Dec. 7, 2009). The current EEO requirements under the part 30 regulations can be accessed on the Department's Web site at *http://www.dol.gov/dol/allcfr/Title_29/Part_30/toc.htm*

As part of the rulemaking process, OA will be reviewing barriers to equal opportunity in registered apprenticeship programs and will be looking at ways to ensure that all individuals, including women and minorities, have equal opportunities in registered apprenticeship programs. Revisions to the equal opportunity regulatory framework for the National Apprenticeship Act are a critical element in the Department's vision to promote and expand registered apprenticeship opportunities in the 21st century while continuing to safeguard the welfare and safety of apprentices.

The purpose of the upcoming town hall meetings is to listen to stakeholders' concerns and ideas about the part 30 regulations and to explain how stakeholders can participate in the impending official rulemaking process.

To help inform the development of the NPRM, DOL is interested in receiving feedback from stakeholders on the effectiveness of the current apprenticeship EEO regulations and suggestions and recommendations for revising the regulations. DOL is particularly interested in the following:

- Sponsors' employment practices that have been particularly effective in recruiting women and minorities for registered apprenticeship programs, such as through pre-apprenticeship programs and partnerships with vocational schools;
- Effective outreach and recruitment strategies to notify the public about registered apprenticeship opportunities;
- Sponsors' employment practices, such as mentoring and support groups, that have been particularly effective strategies in retaining women and minorities in registered apprenticeship programs;
- The methods sponsors use for selecting registered apprentices; and
- Sponsors' experiences with the use of private review bodies for receiving and processing complaints.

Each attendee is welcome to offer feedback and suggestions, but meeting participants are not expected to prepare and present formal testimony. Participants presenting oral statements will be heard in the order in which they sign up on-site on the day of the town hall meeting.

Public Participation

All interested parties are invited to attend the town hall meetings. For the March 18, March 23, and March 25 meetings, DOL requests that you submit no later than three business days prior, a notice of intention to attend if you wish to participate or observe a town hall meeting. You may submit your intention to attend the town hall meetings to Carol Johnson, Coffey Consulting, LLC: (1) Electronically via e-mail to *cjohnson@coffeyconsultingllc.com;* (2) by facsimile to (301) 907–2925 (this is not a toll-free number); or (3) by telephone to (301) 907–0900 (this is not a toll-free number).

Notices of intention to attend the town hall meetings should include the following information:

- Name and contact information;
- Affiliation (organization, association, if any);
- Whether you wish to be an active participant or observer; and
- Whether you need any special accommodations in order to attend or participate in the town hall meeting.

Members of the public wishing to make statements with their feedback on and suggestions for revising the current regulations should limit oral statements to five minutes at the town hall meetings. Members of the public wishing to present an oral statement at

a town hall meeting should forward their requests as soon as possible but no later than March 15, 2010, for the Washington, DC meeting, March 19, 2010, for the Oakland meeting, and March 22, 2010, for the Chicago meeting. Individual requests may be made by telephone to Carol Johnson, Coffey Consulting, LLC, at 301–907–0900, or by e-mail to *cjohnson@coffeyconsultingllc.com*.

Reasonable accommodations will be available for the town hall meetings. Persons needing any special assistance such as sign language interpretation, or other special accommodation, are invited to contact Carol Johnson of Coffey Consulting, LLC, at 301–907–0900, or by e-mail to *cjohnson@coffeyconsultingllc.com*.

Members of the public wishing to participate in the on-line webinar must register for this session through the DOL ETA sponsored Web site at: *http://www.workforce3one.org*. Registration for this webinar is required prior to the event, and the capacity will be limited to the first 100 registrants. Staff and members of organizations are encouraged to register and participate as a single registrant.

Members of the public may also submit written statements without presenting oral statements. Individuals may submit written feedback on and suggestions for revising the current regulations to the Employment and Training Administration, Office of Apprenticeship, 200 Constitution Avenue NW., Room N5311, Washington, DC 20210, Attention: Mr. John V. Ladd, or on-line at *www.regulations.gov*. In order to submit your comments via *www.regulations.gov*, use the Docket Identification Number "ETA–2010–0001" and follow the Web site instructions for submitting comments. Please be advised that the Department will make the comments it receives available to the public without making any change to the comments, or redacting any information. Therefore, the Department recommends that submitters safeguard any personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses included in their comments as such information may become easily available to the public. To ensure consideration, written comments must be must be received on or before April 16, 2010.

Signed at Washington, DC, this 2nd day of March 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–4743 Filed 3–5–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee (NISPPAC)

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, announcement is made for a meeting of the National Industrial Security Program Policy Advisory Committee. The meeting will be held to discuss National Industrial Security Program policy matters.

DATES: The meeting will be held on March 24, 2010 from 10 a.m. to 12 p.m.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Archivist's Reception Room, Room 105, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: David O. Best, Senior Program Analyst, ISOO, National Archives Building, 700 Pennsylvania Avenue, NW., Washington, DC 20408, telephone number (202) 357–5123, or at *david.best@nara.gov*. Contact ISOO at *ISOO@nara.gov* and the NISPPAC at *NISPPAC@nara.gov*.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Wednesday, March 17, 2010. ISOO will provide additional instructions for gaining access to the location of the meeting.

Dated: March 2, 2010.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2010–4844 Filed 3–5–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (1110).

Date/Time: March 17, 2010; 8:30 a.m. to 5 p.m., March 18, 2010; 8:30 a.m. to 1 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 555 Stafford II, Arlington, VA.

Type of Meeting: Open.

Contact Person: Chuck Liarakos, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–8400.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so your name may be added to the building access list.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Reason for Late Notice: Due to a recent water pipe burst resulting in flood damage to NSF offices and files. This caused staff to experience workload interruption and delay.

Agenda:

March 17, 2010

a.m.: Introductions and Updates, Presentation and Discussion—2011 Budget Report; Undergraduate Education; Collections; and Dimensions of Biodiversity.

p.m.: Presentation and Discussion—The Future of Biology; Advances in Sequencing Technology; COV Report; Committee Discussion.

March 18, 2010

a.m.: Presentation and Discussion—Resources and Facilities Report; COV Report; Innovation Experiments.

p.m.: Discussion—Planning for next meeting; feedback; other business.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–4860 Filed 3–5–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370; NRC–2010–0073]

Duke Energy Carolinas, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License for McGuire Nuclear Station Units 1 and 2, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Access To Sensitive Unclassified Non-Safeguards Information (SUNSI)

AGENCY: Nuclear Regulatory Commission.

ACTION: Order, notice of license amendment request, opportunity to comment, opportunity to request a hearing.

DATES: Comments must be filed by April 7, 2010. A request for a hearing must be filed by May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Jon Thompson, Project manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, Maryland, 20852–2738. *Telephone:* (301) 415–1119; *fax number:* (301) 415–2102; *e-mail:* *jon.thompson@nrc.gov.*

ADDRESSES: Please include Docket ID NRC–2010–0073 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0073. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

To access documents related to this notice *see* Section V, Further Information.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–9 and NPF–17 issued to Duke Energy Carolinas, LLC (the licensee) for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendment would revise the Technical Specifications (TSs) associated with the verification of ice condenser door operability and TS surveillance requirements 3.6.13.5 and 3.6.13.6. The amendment application dated October 2, 2008, was supplemented by letters dated August 25, 2009, and October 23, 2009. Access to these documents is discussed in Section V, Further Information. A portion of the August 25, 2009, letter contains sensitive unclassified non-safeguards information (SUNSI), and is not available to the public. *See* Section V, Further Information, and the Order providing instructions for requesting access to the withheld information.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The only analyzed accidents of possible consideration in regards to changes potentially affecting the ice condenser are a loss of coolant accident (LOCA) and a high energy line break (HELB) inside Containment. However, the ice condenser is not postulated as being the initiator of any LOCA or HELB. This is because it is designed to remain functional following a design basis earthquake, and the ice condenser does not interconnect or interact with any systems that interconnect or interact with the Reactor Coolant or Main Steam Systems. Since these proposed changes do not result in, or require, any physical change to the ice condenser that could introduce an interaction with the Reactor Coolant or Main Steam Systems, then there can be no change in the probability of an accident previously evaluated. Regarding consequences of analyzed accidents, the ice condenser is an engineered safety feature designed, in part, to limit the Containment sub-compartment and Containment vessel pressure immediately following the initiation of a LOCA or HELB. Conservative sub-compartment and Containment pressure analysis shows these criteria will be met if the total ice mass within the ice bed is maintained in accordance with the DBA analysis; therefore, the proposed TS SR changes of these requirements will not increase the consequences of any accident previously evaluated.

Thus, based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

As previously described, the ice condenser is not postulated as being the initiator of any design basis accident. The proposed changes do not impact any plant system, structure or component that is an accident initiator. The proposed TSs and TS Bases changes do not involve any hardware changes to the ice condenser or other change that could create any new accident mechanisms. Therefore, there can be no new or different accidents created from those already identified and evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the Containment system. The performance of the fuel cladding and the reactor coolant system will not be impacted by the proposed changes. The Application provides a description of additional sub-compartment and Containment pressure response analysis that has been performed. This analysis

demonstrates that Containment will remain fully capable of performing its design function with implementation of the proposed changes. Therefore, no safety margin will be significantly impacted.

The changes proposed in this LAR do not make any physical alteration to the ice condenser doors, nor does it affect the required functional capability of the doors in any way. The intent of the proposed changes to the ice condenser door surveillance requirements is to eliminate an unnecessary and overly restrictive Lower Inlet Door torque surveillance test. There will be no degradation in the operable status of the ice condenser doors and the ability to confirm operability for the ice condenser doors will be maintained, such that the doors will continue to fully perform their safety function as assumed in the plant's safety analyses.

Thus, it can be concluded that the proposed TS and TS Bases changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. You may submit comments using any of the methods discussed under the **ADDRESSES** caption.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR Part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov*.

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by May 7, 2010. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to

the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by May 7, 2010.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to

include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

V. Further Information

Documents related to the proposed action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Search for these documents using the ADAMS accession numbers: The application for amendment dated October 2, 2008, (ML082900532); the publically-available portions of the August 25, 2009, supplement (ML093430506), and the October 23, 2009 supplement (ML093430689). As discussed above in Section I., a portion of the August 25, 2009, supplement contains SUNSI and is not publically available. Instructions for requesting access to the portion of the document being withheld are contained in the following Order.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR at 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 2nd day of March 2010.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2010–4850 Filed 3–5–10; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414; NRC–2010–0074]

Duke Energy Carolinas, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License for Catawba Nuclear Station Units 1 and 2, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI)

AGENCY: Nuclear Regulatory Commission.

ACTION: Order and notice of license amendment request, opportunity to comment, opportunity to request a hearing.

DATES: Comments must be filed by April 7, 2010. A request for a hearing must be filed by May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Jon Thompson, Project manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852–2738. *Telephone:* (301) 415–1119; *fax number:* (301) 415–2102; *e-mail: jon.thompson@nrc.gov.*

ADDRESSES: Please include Docket ID NRC–2010–0074 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You may submit comments by any one of the following methods.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0074. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

To access documents related to this notice *see* Section V, Further Information.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–35 and NPF–52 issued to Duke Energy Carolinas, LLC (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendment would revise the Technical Specifications (TSs) associated with the verification of ice condenser door operability and TS surveillance requirements 3.6.13.5 and 3.6.13.6. The amendment application dated October 2, 2008, was supplemented by letters dated August 25, 2009, and October 23, 2009. Access to these documents is discussed in Section V, Further Information. A portion of the August 25, 2009, letter contains sensitive unclassified non-safeguards information (SUNSI), and is not available to the public. *See* Section V, Further Information, and the Order providing instructions for requesting access to the withheld information.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The only analyzed accidents of possible consideration in regards to changes potentially affecting the ice condenser are a loss of coolant accident (LOCA) and a high energy line break (HELB) inside Containment. However, the ice condenser is not postulated as being the initiator of any LOCA or HELB. This is because it is designed to remain functional following a design basis earthquake, and the ice condenser does not interconnect or interact with any systems that interconnect or interact with the Reactor Coolant or Main Steam Systems. Since these proposed changes do not result in, or require, any physical change to the ice condenser that could introduce an interaction with the Reactor Coolant or Main Steam Systems, then there can be no change in the probability of an accident previously evaluated. Regarding consequences of analyzed accidents, the ice condenser is an engineered safety feature designed, in part, to limit the Containment sub-compartment and Containment vessel pressure immediately following the initiation of a LOCA or HELB. Conservative sub-compartment and Containment pressure analysis shows these criteria will be met if the total ice mass within the ice bed is maintained in accordance with the DBA [design-basis accident] analysis; therefore, the proposed TS SR changes of these requirements will not increase the consequences of any accident previously evaluated.

Thus, based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

As previously described, the ice condenser is not postulated as being the initiator of any design basis accident. The proposed changes do not impact any plant system, structure or component that is an accident initiator. The proposed TSs and TS Bases changes do not involve any hardware changes to the ice condenser or other change that could create any new accident mechanisms. Therefore, there can be no new or different accidents created from those already identified and evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the Containment system. The performance of the

fuel cladding and the reactor coolant system will not be impacted by the proposed changes. The Application provides a description of additional sub-compartment and Containment pressure response analysis that has been performed. This analysis demonstrates that Containment will remain fully capable of performing its design function with implementation of the proposed changes. Therefore, no safety margin will be significantly impacted.

The changes proposed in this LAR do not make any physical alteration to the ice condenser doors, nor does it affect the required functional capability of the doors in any way. The intent of the proposed changes to the ice condenser door surveillance requirements is to eliminate an unnecessary and overly restrictive Lower Inlet Door torque surveillance test. There will be no degradation in the operable status of the ice condenser doors and the ability to confirm operability for the ice condenser doors will be maintained, such that the doors will continue to fully perform their safety function as assumed in the plant's safety analyses.

Thus, it can be concluded that the proposed TS and TS Bases changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. You may submit comments using any of the methods discussed under the **ADDRESSES** caption.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

II. Opportunity to Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR Part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov*.

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by May 7, 2010. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a

hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by May 7, 2010.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's

electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

V. Further Information

Documents related to the proposed action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Search for these documents using the ADAMS accession numbers: the application for amendment dated October 2, 2008, (ML082900532); the publically-available portions of the August 25, 2009, supplement (ML09343056), and the October 23, 2009 supplement (ML093430689). As discussed above in Section I., a portion of the August 25, 2009, supplement contains SUNSI and is not publically available. Instructions for requesting access to the portion of the document being withheld are contained in the following Order.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR at 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 2nd day of March 2010.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2010–4815 Filed 3–5–10; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298; NRC–2010–0061]

Nebraska Public Power District, Cooper Nuclear Station; Exemption

1.0 Background

Nebraska Public Power District (NPPD or the licensee) is the holder of Facility Operating License No. DPR–46 which authorizes operation of the Cooper Nuclear Station (CNS). The license provides, among other things, that the facility is subject to the rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

The facility consists of a boiling-water reactor located in Nemaha County, Nebraska.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, "Physical protection of plants and materials," Section 73.55, " Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published in the **Federal Register** on March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from three of these additional requirements that CNS now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By application dated December 22, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letter contains security-related information and, accordingly, those portions are not available to the public. The licensee has requested an exemption from the March 31, 2010, implementation date, stating that it must complete a number of modifications to the current site security configuration before all requirements can be met. Specifically, the request is for three requirements that would be met by August 31, 2010, instead of the March 31, 2010, deadline. Granting this exemption for the three items would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed the regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions from the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, would allow an extension from March 31, 2010, until August 31, 2010, of the implementation date for three specific requirements of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR Part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date, as documented in the letter from R.W. Borchardt (NRC) to M.S. Fertel (Nuclear Energy Institute) dated June 4, 2009. The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

CNS Schedule Exemption Request

The licensee provided detailed information in the Attachment to its letter dated December 22, 2009, requesting an exemption. The licensee is requesting additional time to implement certain new requirements due to the amount of engineering and design, material procurement, construction and installation activities, inclement weather, and a fall 2009 refueling outage. The licensee describes a comprehensive plan to expand the protected area with upgrades to the security capabilities of its CNS site and provides a timeline for achieving full compliance with the new regulation. The Attachment to the licensee's letter contains security-related information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline, justification for the exemption request, a description of the required changes to the site's security configuration, and a timeline with critical path activities that would bring the licensee into full compliance by August 31, 2010. The timeline provides dates indicating when (1) construction will begin on various phases of the project (e.g., new buildings and fences), and (2) critical equipment will be ordered, installed, tested and become operational. A redacted version of the licensee's exemption request, including attachment, is publicly available at Agencywide Documents Management and Access System (ADAMS) Accession No. ML093580132.

Notwithstanding the scheduler exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By August 31, 2010, CNS will be in full compliance with the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittal and concludes that the licensee has justified its request for an extension of the compliance date with regard to three specified requirements of 10 CFR 73.55 until August 31, 2010.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The long-term benefits that will be realized when the CNS modifications are complete justifies extending the full compliance date in the case of this particular licensee. The security measures that CNS needs additional time to complete, are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the three items specified in the Attachment to NPPD's letter dated December 22, 2009, the licensee is required to be in full compliance with 10 CFR 73.55 by August 31, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (i.e., 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 8153; February 23, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of February 2010.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–4830 Filed 3–5–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–134; NRC–2010–0053]

Notice of License Amendment Request by the Worcester Polytechnic Institute for Approval of the Decommissioning Plan for the Leslie C. Wilbur Nuclear Reactor Facility in Worcester, MA and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment request and opportunity to request a hearing.

DATES: A request for a hearing must be filed by May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Ted Carter, Project Manager, Materials Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission (NRC), Two White Flint North, Mail Stop T8 F5, 11545 Rockville Pike, Rockville, Maryland 20852–2738 *Telephone:* (301) 415–5543; *fax number:* (301) 415–5369; *e-mail: ted.carter@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

In an application dated September 30, 2009, Worcester Polytechnic Institute (WPI or the licensee) submitted a Decommissioning Plan (DP) to the NRC for approval for its Leslie C. Wilbur Nuclear Reactor Facility (LCWNRF) on the campus of WPI in Worcester, Massachusetts. The DP and supporting documents for the LCWNRF are located in ADAMS at ML092880231. WPI is working closely with the Department of Energy, the Idaho National Laboratory and NAC International, Inc. to facilitate and schedule the removal of reactor fuel from the facility before WPI's overall dismantling and decommissioning begins. WPI submitted its combined Quality Procedure and Quality Assurance (QA) document (ML092160598) in relation to WPI's nuclear fuel removal process on July 21, 2009. NRC reviewed and approved WPI's QA program for fuel removal on August 19, 2009 (ML092310471).

On September 21, 2009, WPI submitted its nuclear materials Transportation Plan (TP) in support of the removal of fuel. This document contains safeguards information and is not available to the public (*see* Section V, Further Information, for instructions for requesting access to this document).

The TP which specifically addresses compliance with the requirements of 10 CFR Part 73 ("Physical Protection of Plants and Material"), is under review. The TP will govern the one-time shipment offsite of WPI's nuclear reactor fuel. WPI plans to ship the fuel to another research and test reactor licensed by the NRC.

If the NRC approves WPI's DP, the approval will be documented in an amendment to NRC License No. R–61. Before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the AEA), and the National Environmental Policy Act. These findings will be documented, respectively, in a Safety Evaluation Report (SER), and in a separate environmental analysis performed by the NRC.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR Part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide

a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by May 7, 2010. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by May 7, 2010.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who

have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from March 8, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

V. Further Information

Documents related to the proposed action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are the WPI Decommissioning Plan for its Leslie C. Wilbur Nuclear Reactor Facility (Initial document dated March 31, 2009 under ML090960651 and Final document dated September 30, 2009 under ML092880231), the WPI Quality Procedure and Quality Assurance Document (ML092160598), the NRC Approval of the Quality Procedure and Quality Assurance Document (ML092310471), and the Decommissioning Plan Acceptance Review (ML091730008). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR at 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee. As discussed above in Section I., the WPI nuclear materials Transportation Plan contains safeguards information and is not publically available. Instructions on requesting access to this document are contained in the following order.

Order Imposing Procedures for Access to Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Safeguards Information (SGI). Requirements for access to SGI are primarily set forth in 10 CFR Parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SGI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SGI under these procedures should be submitted as described in this paragraph.

request must contain the following information:

(a) A statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding; [2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, "Questionnaire for Non-Sensitive Positions" for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR Part 2, Subpart G and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) website, a secure website that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at (301) 492–3524.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–7232 or (301) 492–7311, or by e-mail to *Forms.Resource@nrc.gov*. The fingerprint card will be used to satisfy the requirements of 10 CFR Part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check.

(d) A check or money order payable in the amount of $ 200.00 [4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted, and

(e) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(3)(b), (c), and (d) of this Order must be sent to the following address: Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop TWB–05–B32M, Washington, DC 20555–0012.

These documents and materials should not be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required above.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraph C.(3) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need to know the SGI requested.

F. If the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [5] by each individual who will be granted access to SGI.

G. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

H. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SGI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SGI contentions by that later deadline.

I. Review of Denials of Access.

(1) If the request for access to SGI is denied by the NRC staff either after a determination on standing and need to know, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's or Office of Administration's adverse determination by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

J. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

K. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 2nd day of March 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Safeguards Information in This Proceeding

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and including the application fee for the fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need to know. If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need to know," or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). **Note:** Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination either before the presiding officer or another designated officer under 10 CFR 2.705(c)(3)(iv).
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[6] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SGI request submitted to the NRC staff under these procedures.

[FR Doc. 2010–4825 Filed 3–5–10; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0080]

NUREG–0654/FEMA–REP–1, Rev. 1, Supplement 3, Guidance for Protective Action Recommendations for General Emergencies; Draft for Comment

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Announcement of issuance for public comment, availability.

SUMMARY: The NRC has issued for public comment a document entitled: "NUREG–0654/FEMA–REP–1, Rev. 1, Supplement 3, Guidance for Protective Action Recommendations for General Emergencies, Draft Report for Comment."

DATES: Please submit comments by May 24, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0080 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0080. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* NUREG–0654/FEMA–REP–1, Rev. 1, Supplement 3, "Guidance for Protective Action Recommendations for General Emergencies, Draft Report for Comment" is available electronically under ADAMS Accession Number ML100150268.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0080.

FOR FURTHER INFORMATION CONTACT: Randy Sullivan, Division of Preparedness and Response, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–1123, e-mail: *randy.sullivan@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is proposing to update its protective action recommendation guidance by issuing NUREG–0654/FEMA–REP–1, Rev. 1, Supplement 3, "Guidance for Protective Action Recommendations for General Emergencies, Draft Report for Comment." When this document is issued in final form for use, it will supersede the existing guidance contained in Supplement 3 to NUREG–0654/FEMA–REP–1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," which was issued in draft form for interim use and guidance in 1996. This updated draft guidance reflects insights the NRC gained through study of protective action strategy efficacy documented in NUREG–0653, "Review of NUREG–0654, Supplement 3, 'Criteria for Protective Action Recommendations for Severe Accidents'" (which can be found at the NRC Web site address: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/contract/cr6953/*).

The NRC has coordinated the draft Supplement 3 with the Federal Emergency Management Agency. The draft guidance incorporates the following elements:

- Increased offsite response organization involvement in development of protective action strategy
- Consideration of staged evacuation as the initial protective action at General Emergency
- Increased use of shelter-in-place for certain scenarios
- Guidance to improve communications with the public before and during an emergency

The NRC expects to issue the guidance in final form in mid-2011 and nuclear power plant licensees to implement the guidance in their emergency preparedness programs within one year of the issuance of this guidance document in final form. Elements of the guidance should be demonstrated by each applicable licensee in its next biennial exercise with a scenario that requires offsite protective actions that is conducted more than one year after that issuance date. The NRC is seeking comment on the technical content of draft Supplement 3 as well as its implementation schedule.

Dated at Rockville, Maryland this 25th day of February 2010.

For the Nuclear Regulatory Commission.

Robert E. Kahler,

Chief, Inspection and Regulatory Improvements Branch, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

[FR Doc. 2010–4878 Filed 3–5–10; 8:45 am]
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NUCLEAR REGULATORY COMMISSION

[Docket No.: 70–7015; EA–2009–291; NRC–2009–0187]

In the Matter of: AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility) and All Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Requirements for a Reviewing Official for the Implementation of a Safeguards Information Program (Effective Immediately)

I

AREVA Enrichment Services, LLC (AES), has applied to the U.S. Nuclear Regulatory Commission (NRC) for a license to authorize it to construct and operate a uranium enrichment facility in Bonneville County, Idaho. AES submitted a license application to the NRC on December 30, 2008 and a revised license application on April 23, 2009; this revised license application is currently under review. On October 22, 2009, AES notified the NRC of its implementation of a Safeguards Information (SGI) program for the Eagle Rock Enrichment Facility in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 73.22, "Protection of Safeguards Information: Specific Requirements."

On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the Atomic Energy Act of 1954 (AEA), as amended, to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to SGI.[1] Initially, after enactment of the EPAct, the Commission issued orders to certain licensees imposing fingerprinting and criminal history checks for individuals seeking access to SGI.

Subsequently, the NRC amended the regulations at 10 CFR Part 73, "Physical Protection of Plants and Materials," to incorporate the fingerprinting and criminal history records check requirements for access to SGI, to conform with the EPAct, and to include the general requirements of the Commission's orders. The amendment to 10 CFR Part 73 addressed and expanded the protection of SGI, including access to SGI, the types of security information to be protected, and handling and storage requirements. The requirements set forth in 10 CFR Part 73 reflect the minimum restrictions that the Commission found necessary to protect SGI against inadvertent release or unauthorized disclosure that might compromise public health and safety or the common defense and security.

Although the amendment to 10 CFR Part 73 generally incorporates the requirements of the orders, it did not codify the requirement for each licensee or applicant to nominate a reviewing official for NRC approval, including the notification to the NRC of any changes to the reviewing official. The orders required licensees to nominate an individual to review the results of an individual's criminal history records check report and other relevant trustworthiness and reliability information to determine whether that individual may be given access to SGI. In the October 22, 2009, notification of its implementation of an SGI program, AES nominated a reviewing official and submitted the individual's fingerprints to the NRC under separate cover. This order imposes the requirement for nominating an initial reviewing official and for notifying the NRC of any desired change to the reviewing official.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and criminal history records check of each individual who seeks access to SGI. In addition, the regulations at 10 CFR Part 73 state that no person may have access to SGI unless the person has an established need to know and satisfies the trustworthiness and reliability requirements of the regulations.

In order to provide assurance that AES is taking appropriate measures to comply with the fingerprinting and criminal history check requirements for access to SGI, AES shall implement the requirements of this order. In addition, pursuant to 10 CFR 2.202, "Orders," the NRC finds that in light of the common defense and security matters identified above, which warrant the issuance of this order, public health and safety and the public interest require that this order be **effective immediately.**

III

Accordingly, under Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA and under the Commission's regulations at 10 CFR 2.202; 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material"; 10 CFR Part 40, "Domestic Licensing of Source Material"; 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material"; and 10 CFR Part 73, it is hereby ordered, **effective immediately,** that AES and all other persons who seek or obtain access to SGI described herein shall comply with the requirements set forth in this order.

A. No person may have access to any SGI if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with applicable requirements and Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. AES shall comply with the following three requirements:

1. The NRC has determined that the individual whom AES nominated as its reviewing official meets the fingerprinting and FBI identification and criminal history records check requirements.[2] AES shall, in a written response to the Commission, inform the NRC whether this individual is approved as AES's reviewing official, based upon the required background check according to 10 CFR 73.22(b), for determining access to SGI by this individual. AES may, at the same time or later, submit the fingerprints of other individuals for whom it seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in 10 CFR Part 73.

2. AES shall notify the NRC of any desired change to the reviewing official. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as the AES reviewing official, subject to AES performing the required 10 CFR 73.22 background check. The NRC will base its determination on a previously obtained or new criminal history records check.

[1] SGI is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under Section 147 of the AEA.

[2] The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 to the transmittal letter of this order is an administrative determination that is outside the scope of this order.

3. AES shall, in writing, within 20 days of the date of this order, notify the Commission (a) if it is unable to comply with any of the requirements described in the order or (b) if compliance with any of the requirements is unnecessary based on its specific circumstances. In the notification, AES shall provide justification for seeking relief from, or the variation of, any specific requirement.

Licensees shall submit their responses to B.1, B.2, and B.3 above to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, licensees shall mark their responses as "Security-Related Information—Withhold under 10 CFR 2.390."

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions on demonstration of good cause by AES.

IV

In accordance with 10 CFR 2.202, AES must, and any other person adversely affected by this order may, submit an answer to this order and may request a hearing on this order within 20 days of the date of this order. Where good cause is shown, the NRC will consider extending the time to request a hearing. A request for an extension of time in which to submit an answer or to request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. The answer may consent to this order. Unless the answer consents to this order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which AES or other entities adversely affected rely and the reasons as to why the NRC should not have issued the order. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to AES if an entity other than AES submits the answer or hearing request. Because of possible delays in the delivery of mail to U.S. Government offices, the NRC requests that answers and requests for hearings be transmitted to the Secretary of the Commission either by facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If an entity other than AES requests a hearing, that entity shall set forth, with particularity, the manner in which its interest is adversely affected by this order and shall address the criteria set forth in 10 CFR 2.309, "Public Inspections, Exemptions, Requests for Withholding."

If AES or a person whose interest is adversely affected by this order requests a hearing, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at this hearing shall be whether this order should be sustained.

Under 10 CFR 2.202(c)(2)(i), AES may, in addition to demanding a hearing, at the time the answer is filed, or soon thereafter, move that the presiding officer set aside the immediate effectiveness of the order on the grounds that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for a hearing or written approval of an extension of time in which to request a hearing, the provisions, as specified above in Section III, shall be final 20 days from the date of this order without further issuance of an order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions, as specified above in Section III, shall be final when the extension expires if a hearing request has not been received. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated this 26th day of February 2010.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–4829 Filed 3–5–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–09–068; NRC–2010–0085]

In the Matter of Mr. Lawrence E. Grimm; Order Prohibiting Involvement in NRC-Licensed Activities

I

Mr. Lawrence E. Grimm was employed as a radiation safety officer at the U.S. Department of Commerce's National Institute of Standards and Technology (NIST or Licensee), Boulder, Colorado facility. NIST holds License 05–3166–05, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30 on December 19, 1966, and amended to include 10 CFR parts 40 and 70 on April 19, 2007. The license authorizes the operation of the NIST-Boulder facility in accordance with the conditions specified therein. Mr. Grimm was listed on the license as the radiation safety officer (January 18, 2007, Amendment 27, until the issuance of Amendment 33, on January 16, 2009).

II

On July 22, 2008, the United States Nuclear Regulatory Commission's Office of Investigations (OI) initiated an investigation to determine if Mr. Grimm willfully failed to provide complete and accurate information to the NRC in a license amendment application dated February 15, 2007, regarding written procedures for the safe use of radioactive sources and security of material. A predecisional enforcement conference was held on January 7, 2010, with Mr. Grimm to obtain Mr. Grimm's perspective on the apparent violation.

Based on a review of information from the investigation and information provided during the predecisional enforcement conference, a violation of the NRC's rule prohibiting deliberate misconduct, 10 CFR 30.10, was identified, with two examples, involving the dosimetry program and the security of materials, which caused the Licensee to be in violation of 10 CFR 30.9. Specifically, on February 15, 2007, Mr. Grimm submitted an amendment request to expand NIST-Boulder's licensed activities to acquire and use source and special nuclear material, including plutonium. The 2007 amendment request stated that the "Boulder facility maintains a radiation safety procedure manual entitled, 'Health Physics Instructions' (HPIs). Drawn from the Gaithersburg radiation safety procedures, these procedures cover all health physics aspects pertinent to Boulder's radiation safety

program." Those HPIs did not cover all health physics aspects pertinent to NIST-Boulder's program, however, because they did not address the types of materials NIST-Boulder was amending its license to acquire. Mr. Grimm stated that he had reviewed all the HPIs cited throughout the amendment request before submitting the request to the NRC, and admitted believing that they were not all appropriate for NIST-Boulder. These procedures included NIST's Dosimetry Program Procedures HPI 2–1 through HPI 2–7. Mr. Grimm stated during the OI interviews and also during the predecisional enforcement conference that the Gaithersburg procedures were cited because it was convenient, but that the program described in the amendment request was not in place at the time of the request, and that he never intended to implement the cited procedures as written. Notably, there were no procedures in place for providing internal monitoring of occupationally exposed workers, as described in Procedure HPI 2–5 (which would have been appropriate to assess and monitor personnel exposure to plutonium). Also, there was no program in place for providing dosimetry to frequent users of the laboratory, or "public dose workers," who did not actually work with radioactive materials, but who worked in the same laboratories while the materials were in use. Mr. Grimm admitted having the knowledge and understanding that the information provided to the NRC in the license amendment was required to be complete and accurate. Because Mr. Grimm knew that he needed to provide the NRC with complete and accurate information and knew that the information he was providing about the dosimetry program was not accurate, Mr. Grimm's statements in the amendment request regarding the dosimetry program constituted deliberate misconduct.

The 2007 amendment request also referenced security protocols. Item 9 of the request, "Facilities and Equipment," stated that "access to buildings and laboratories requires a coded key card" and, in the laboratories section of the amendment request it stated, "NIST laboratories require a coded key card for access." The NRC inspection staff identified that laboratories where licensed materials were used did not have coded key card access. The NRC determined that NIST staff members and associates assigned to work in the Quantum Physics Laboratories at the NIST-Boulder facility were issued a key to the project laboratories, including the laboratory in which the licensed materials were used and stored. The vast majority of these people were not involved in using the licensed material. The keys were not controlled in a manner to secure the material from unauthorized removal or access while in storage. While Mr. Grimm worked at NIST-Boulder for four months and acknowledged visiting the laboratory where the material would be stored prior to submitting the amendment request, Mr. Grimm stated that he did not know how the laboratory keys were distributed or controlled. In addition, Mr. Grimm stated that he never intended to rely on locked doors as a means of securing the material, because he thought the doors would be impractical to control in such a research environment. During the predecisional enforcement conference, Mr. Grimm stated that he considered the laboratory door to be a secondary barrier and he considered a lockable file cabinet and cryostat to be the methods used to ensure compliance with the regulations. While a locked container was described in the amendment requests as one of the security features, the cryostat was not. Mr. Grimm further stated that, in his opinion, security for a source in an academia situation is not predicated on doors. Mr. Grimm knew he needed to provide the NRC with complete and accurate information, and he knew his statement in the amendment request regarding security provisions for the licensed material was not complete or accurate. Accordingly, Mr. Grimm's statements in the amendment request regarding security constituted deliberate misconduct.

III

Based on the above, Mr. Grimm, while an employee of the Licensee in 2007, has engaged in two instances of deliberate misconduct that has caused the Licensee to be in violation of 10 CFR 30.9. Further Mr. Grimm deliberately provided to the NRC license reviewers information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 30.10. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Grimm's misrepresentations to the NRC caused the Licensee to violate 10 CFR 30.9 and have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Grimm were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety, and interest require that Mr. Grimm be prohibited from any involvement in NRC-licensed activities for a period of one year from the date this Order is final. Additionally, Mr. Grimm is required to notify the NRC of his first employment in NRC-licensed activities for a period of three years following the prohibition period.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered that:*

1. Mr. Lawrence E. Grimm is prohibited for one year from the date this Order is final from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, or order issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Grimm is currently involved in NRC-licensed activities, he must immediately cease those activities; inform the NRC of the name, address and telephone number of the employer; and provide a copy of this order to the employer.

3. For a period of three years after the one year period of prohibition has expired, Mr. Lawrence E. Grimm shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Grimm of good cause.

V

In accordance with 10 CFR 2.202, Mr. Grimm must, and any other person

adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, Mr. Grimm and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than Mr. Grimm requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 1st day of March 2010.

For the U.S. Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2010–4831 Filed 3–5–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2010–19; Order No. 415]

Mail Classification Change

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to make a minor modification to the Mail Classification Schedule. The change affects a change in terminology. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: March 10, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: On February 26, 2010, the Postal Service filed a notice with the Commission pursuant to 39 CFR 3020.90 *et seq.* concerning a change in classification which reflects a change in terminology from Bulk Mailing Center (BMC) to Network Distribution Center (NDC), and revises its regulations to change the terms in Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) and other related manuals and publications effective March 15, 2010.[1] The Postal Service states revisions will also be made in its service standard regulations in 39 CFR part 121 to indicate the terminology change from BMC to NDC. The Postal Service states it will concurrently file a notice explaining these changes in the **Federal Register**. *Id.* at 1.

The Postal Service indicates that the original BMC network was established in the 1970s to process mail which now includes Parcel Post, Bound Printed Matter, Media Mail, Standard Mail, and Periodicals. *Id.* However, variation in volume and changes in the mailing habits of the public and large mailers require modifications to BMC processing and transportation. *Id.* The Postal Service states in order to maximize its efficiency, changes have been made to mail flow processes through the new NDC network, and it is converting BMCs to NDCs. *Id.* at 1–2. It notes that as part of the transition to the new NDC concept, only a terminology change is being implemented now and there are no revisions to mailing standards, service standards, or processes as a result of this notice. *Id.* at 2. The Postal Service states that in the future, it intends to propose changes to the preparation, entry and deposit of mail related to the NDC concept. *Id.* The Postal Service proposes conforming Mail Classification Schedule language to replace references to the BMC, with references to the NDC.[2] *Id.* at 2–3.

Pursuant to 39 CFR 3020.92, the Commission provides notice of the Postal Service's filing and affords interested persons an opportunity to express views and offer comments on whether the proposed classification change is inconsistent with 39 U.S.C. 3642. Comments are due March 10, 2010.

Section 3020.91 requires the Postal Service to file notice of the proposed change with the Commission no less than 15 days prior to the effective date of the proposed change. The Notice states that the classification change is to become effective March 15, 2010.

The Commission appoints Paul L. Harrington to serve as Public Representative in this docket.

It is ordered:

1. The Commission establishes Docket No. MC2010–19 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in this proceeding are due no later than March 10, 2010.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–4861 Filed 3–5–10; 8:45 am]

BILLING CODE 7710–FW–S

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

"Checking in with the SEC's Enforcement Division"; SEC File No. 270–598; OMB Control No. 3235–NEW.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit a questionnaire to the Office of Management and Budget for approval.

The Commission intends to send the questionnaire to Securities Law Practitioners, Securities Law Professors and Securities Industry Participants. The questionnaire consists of three (3) questions. It asks participants to identify activities that they believe to be significant, to explain why and to rank the significance of the activities.

The Commission needs the information to develop a balanced, informed, and insightful perspective on the impact of the Division's activities. Ultimately, this will be used in developing a new metrics beyond Enforcement statistics, which will assist the Division in evaluating and prioritizing its activities. A secondary purpose is to create an effective medium of communication to encourage and

[1] Notice of the United States Postal Service of Minor Classification Change, February 26, 2010 (Notice). This notice is available on the Commission's Web site, *http://www.prc.gov*.

[2] The Postal Service also notes that on August 3, 2009, it changed all of its applicable labeling lists to effectuate the name change from BMC to NDC. It states that mailers were given a 73–day transition period to make the appropriate changes to mailing software applications. *Id.* at 2.

facilitate dialogue from industry participants.

The respondents to the questionnaire are Securities Law Practitioners, Securities Law Professors and Securities Industry Participants.

The total estimated reporting burden of the questionnaire is approximately twenty-two and a half (22.5) hours semi-annually. It is estimated that it will take each respondent approximately thirty (30) minutes to complete the questionnaire. Assuming that all forty-five (45) individuals respond, the total estimated burden will be twenty-two and a half (22.5) hours semi-annually. This was calculated by multiplying the total number of respondents times how long it is estimated to take to complete the questionnaire (45 respondents × 30 minutes = 22 hours and 30 minutes). Since the information collection is intended to be sent out semi-annually, the total yearly burden will be forty-five hours (45), totaling one (1) hour per respondent annually.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*.

March 1, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4741 Filed 3–5–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61611; File No. SR–NYSEAmex–2010–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 123C(9)(a)(1) To Extend the Operation of the Pilot Operating Pursuant the Rule Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or June 1, 2010

March 1, 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 February 24, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 123C(8)(a)(1) to extend the operation of the pilot to temporarily suspend certain NYSE Amex Equities Rule requirements relating to the closing of securities on the Exchange until the earlier of Securities and Exchange Commission approval to make such pilot permanent or March 1, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex LLC ("NYSE Amex" or the "Exchange"), formerly the American Stock Exchange LLC, proposes to amend NYSE Amex Equities Rule 123C(9)(a)(1)[3] to extend the operation of the pilot operating pursuant the Rule until the earlier of Securities and Exchange Commission approval to make such pilot permanent or June 1, 2010.

NYSE Amex Equities Rule 123C(9)(a)(1) allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The rule has operated on a pilot basis since April 2009 ("Extreme Order Imbalances Pilot" or "Pilot").[4] Through this filing, NYSE Amex proposes to extend the Pilot until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or June 1, 2010.[5]

Background

Pursuant to NYSE Amex Equities Rule 123C(9)(a)(1), the Exchange may suspend NYSE Amex Equities Rules 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close. The provisions of NYSE Amex Equities Rule 123C(9)(a)(1) operate as the Extreme Order Imbalance Pilot.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How often a Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4 p.m..

The Extreme Order Imbalance Pilot is scheduled to end operation on March 1, 2010.[6] The Exchange is currently

[3] *See* Securities Exchange Release No. 61244 (December 28, 2009), 75 FR 479 (January 5, 2010) (SR–NYSEAmex–2009–81) (Modify the closing process and renumbering 123C(8) to 123C(9)). The Exchange anticipates operation of these changes to commence on or about March 1, 2010.

[4] *See* Securities Exchange Act Release No. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR–NYSEALTR–2009–15).

[5] The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC. *See* SR–NYSE–2010–11.

[6] *See* Securities and Exchange Act Release No. 61265 (December 31, 2009), 75 FR 1094 (January 8,

preparing a rule filing seeking permission to make the provisions of the Pilot permanent with certain modifications but does not expect that filing to be completed and approved by the Commission before March 1, 2010.

Proposal To Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a mechanism for ensuring a fair and orderly close when interest is received at or near the close that could negatively affect the closing transaction. The Exchange believes that this tool has proved very useful to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.

As the Exchange has previously stated, NYSE Amex Equities Rule 123C(9) will be invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price. This is evidenced by the fact that during the course of the Pilot, the Exchange invoked the provisions of NYSE Amex Equities Rule 123C(9), including the provisions of the Extreme Order Imbalance Pilot pursuant to NYSE Amex Equities Rule 123C(9)(a)(1), in only two securities on June 26, 2009, the date of the annual rebalancing of Russell Indexes.

In addition, during the operation of the Pilot, the Exchange determined that it would not be as onerous as previously believed to modify Exchange systems to accept orders electronically after 4 p.m. The Exchange has completed the system modifications and is now in the process of testing the modifications. The Exchange anticipates that its quality assurance review process will be completed by June 1, 2010.

Given the above, the Exchange believes that provisions governing the Extreme Order Imbalance Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the Pilot in order to allow the Exchange to formally submit a filing to the Commission to convert the provisions governing the Pilot to permanent rules and complete the technological modifications required to accept orders electronically after 4 p.m. The Exchange therefore requests an extension from the current expiration date of March 1, 2010, until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or June 1, 2010.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles. Specifically an extension will allow the Exchange to: (i) Prepare and submit a filing to make the provisions governing the Extreme Order Imbalance Pilot permanent; (ii) have such filing complete public notice and comment period; and (iii) complete the 19b–4 approval process. The rule operates to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[11] which would make the rule change operative immediately. The Exchange believes that continuation of the Pilot does not burden competition and would operate to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Pilot to continue without interruption while the Exchange works towards submitting a separate proposal to make the Pilot permanent. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

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:

2010) (SR–NYSEAmex–2009–96) (extending the operation of the pilot from December 31, 2009 to March 1, 2010).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE Amex has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(3)(C).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–15. 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,[14] 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–NYSEAmex–2010–15 and should be submitted on or before March 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4735 Filed 3–5–10; 8:45 am]

BILLING CODE 8011–01–P

[14] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml*.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61615; File No. SR–NYSEAmex–2010–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex, LLC Amending Its Fee Schedule

March 1, 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 February 1, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges (the "Schedule") effective February 1, 2010. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.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, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex proposes to make multiple changes to its Schedule effective February 1, 2010. A more detailed description of the proposed changes follows.

Specialists, E-Specialists and DOMM Rights Fee:

Presently we charge to Specialists, E-Specialists and Directed Order Market Makers, on a pro rata basis, a monthly rights fee that is based on a tiered scale according to how much Average Daily National Customer Volume was executed during a rolling 3 month period. Effective February 1, 2010, the Exchange will reduce the rights fee by 50% in each tier as shown below.

Average National Daily Customer Contracts per issue:	Monthly base rate:
0 to 2,000	[$150] *$75*
2,001 to 5,000	[$400] *$200*
5,001 to 15,000	[$750] *$375*
15,001 to 100,000	[$1,500] *$750*
Over 100,000	[$3,000] *$1,500*

Non-Directed Market Maker Fee and Market Maker Fee Cap:

The Exchange is also proposing to increase the per contract rate paid by Non-Directed Market Makers from $.17 to $.18 per contract. Concurrently, the Exchange also proposes to introduce a fee cap for all Market Makers.[3] The fee cap will be set at $250,000 per month plus an incremental rate of $.01 per contract for all Specialist, e-Specialist and Market Maker (both Directed and non-Directed) volume executed in excess of 2,500,000 contracts per month. For example, today a Non-Directed Market Maker who executes 3,000,000 contracts in a given month would pay $510,000 (3,000,000 × $.17). The introduction of the fee change would result in the same Non-Directed Market Maker paying $255,000 (3,000,000 × $.18 = $540,000 which is then reduced to $250,000 plus 500,000 [incremental volume over 2,500,000] × $.01 = $5,000 resulting in the monthly charge of $255,000). Specialist, e-Specialist, and Market Maker (both Directed and non-Directed) fees will be aggregated for purposes of the cap. The Exchange will exclude any fees or volume associated with a Strategy Trade (reversals and conversions, dividend spreads, box spreads, short stock interest spreads, merger spreads, and jelly rolls). Any fees or volume attributable to a Strategy Trade will not be counted towards either the $250,000 fee cap, or the volume threshold of 2,500,000 contracts. All Royalty Fees will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Market Makers include all Specialists, e-Specialists, Non-Directed Market Makers and Directed Market Makers.

continue to be charged and do not count toward the $250,000 fee cap.

NYSE Amex is continuously monitoring our fees in an attempt to ensure that we remain competitive while also ensuring that we allocate our costs equitably across all participants. NYSE Amex believes that proposed changes are equitable and apply uniformly to all similarly situated ATP Holders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. NYSE Amex believes that proposed changes are equitable and apply uniformly to all similarly situated ATP Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78f(b).
[5] 15 U.S.C. 78f(b)(4).
[6] 15 U.S.C. 78s(b)(3)(A).
[7] 17 CFR 240.19b–4(f)(2).

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–NYSEAmex–2010–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–10 and should be submitted on or before March 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4737 Filed 3–5–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61616; File No. SR–NYSE–2010–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC as Modified by Amendment No. 1 Thereto Clarifying the Implementation Date of the Amendments to NYSE Rule 123C To Modify the Procedures for Its Closing Process and Make Conforming Changes to NYSE Rules 13 and 15

March 1, 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 February 25, 2010, New York Stock Exchange LLC ("NYSE" 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. On March 1, 2010, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify the implementation date of the amendments to NYSE Rule 123C (Market On The Close Policy And Expiration Procedures) to modify the procedures for its closing process; and make conforming changes to NYSE Rules 13 ("Definitions of Orders") and 15 ("Pre-Opening Indications"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

[8] 17 CFR 200.30–3(a)(12).
[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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

New York Stock Exchange LLC ("NYSE" or the "Exchange") submits this filing to clarify the implementation date of amendments to NYSE Rule 123C (Market On The Close Policy And Expiration Procedures) to modify the procedures for its closing process; and make conforming changes to NYSE Rules 13 ("Definitions of Orders") and 15 ("Pre-Opening Indications") approved by the Securities and Exchange Commission on December 23, 2009 ("Close [3] Modifications").[4]

The Exchange notes that similar changes are proposed to the rules of its affiliate, NYSE Amex LLC.[5]

Background

In 2009, the NYSE implemented changes designed to streamline and improve the efficiency of its closing process, which included establishing a single print for the closing transactions, activating systemic compliance filters for market at-the-close ("MOC") and limit at-the-close ("LOC") orders and enhancing the transparency of its informational data feed for imbalances by including d-Quotes [6] and all other e-Quotes [7] containing pegging instructions eligible to participate in the closing transaction in the NYSE Order Imbalance Information datafeed.[8]

In addition, on December 23, 2009, the SEC approved the Exchanges filing to implement Close Modifications designed to further streamline the closing process, enhance transparency on the close and allow for greater customer participation when there is an imbalance in a security prior to the closing transaction. Pursuant to the Close Modifications, the NYSE amended NYSE Rule 123C to: (i) Extend the time for the entry of MOC/LOC orders [9] from 3:40 p.m. to 3:45 p.m.; (ii) amend the procedures for the entry of MOC/LOC orders in response to imbalance publications and regulatory trading halts; (iii) change to the cancellation time for MOC/LOC orders to 3:58 p.m.; (iv) require only one mandatory imbalance publication; (v) rescind the provisions governing Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements; (vi) modify the dissemination of Order Imbalance Information pursuant to NYSE Rule 123C(6) to commence at 3:45 p.m.; (vii) include additional information in both the pre-opening and pre-closing Order Imbalance Information data feeds; (viii) amend NYSE Rule 13 to create a conditional-instruction limit order type called the Closing Offset Order ("CO order"), which may only be used to offset an existing imbalance of orders on the close; (ix) delete the "At the Close" order type from NYSE Rule 13 and replace it with the specific definitions of MOC/LOC orders; and (x) codify the hierarchy of allocation of interest in the closing transaction in NYSE Rule 123(C).

Implementation of Closing Modifications

The Exchange has not made operative the amendments described above. Based on feedback from the member firm community, the NYSE has delayed the implementation of the Closing Modifications to March 1, 2010. The Exchange believes that commencing operation of the Closing Modifications on March 1, 2010, will provide participants with additional time to ensure that the member firms community will be systemically ready to comply with the new provisions of the Rule.

The Exchange anticipates that the Close Modifications will be operative in all securities effective March 1, 2010; however, should conditions arise to delay the implementation of the Close Modifications, the Exchange will provide information to its constituents about changes to the start date via its Trader Update Notices that are sent via e-mail to subscribers and posted on the Exchange's Web site.

Deletion of Erroneously Included Text

The Exchange further proposes to delete NYSE Rule 123C(5)(d). Specifically, NYSE Rule 123C(5)(d) is duplicative rule text. It addresses the publication of the Order Imbalance Information data feed in the event of an early close. NYSE Rule 123C(5)(d) is the exact same language as NYSE Rule 123C(6)(a)(v) ("Publication of Order Imbalance Information Data Feed"). The paragraph was inadvertently copied into the wrong section and should therefore be deleted.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [10] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The instant proposal is in keeping with these principles in that it provides transparency to market participants by explaining the anticipated operation date of the Close Modifications and the locations where market participants may find information about any changes to the anticipated operative date.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[3] Included in these amendments were conforming changes related to the information disseminated prior to the opening transaction which are also proposed in this filing.

[4] See Securities Exchange Release No. 34–61233 (December 23, 2009), 74 FR 69169 (December 30, 2009) (SR–NYSE–2009–111).

[5] See SR–NYSEAmex–2010–17.

[6] See definition of d-Quotes NYSE Rule 70, Supplementary Material .25.

[7] See definition of e-Quotes NYSE Rule 70(a).

[8] See Securities Exchange Release No. 59345 (February 3, 2009), 74 FR 6444 (February 9, 2009) (SR–NYSE–2009–10) (Establishing a single print for the closing transaction). See also, Securities Exchange Release No. 60153 (June 19, 2009), 74 FR 30656 (June 26, 2009) (SR–NYSE–2009–49) (Inclusion of d-Quotes and all other e-Quotes containing pegging instructions eligible to participate in the closing transaction NYSE Order Imbalance Information datafeed).

[9] In the NYSE Rules and for the purposes of this discussion, the terms "market-on-close" and "limit-on-close" are used interchangeably with "market-at-the-close" and "limit-at-the-close".

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[13] However, pursuant to Rule 19b4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[14] which would make the rule change operative immediately. The Exchange believes that waiver of the operative delay is appropriate because the proposed rule change is merely a clarification of the operative date of previously approved amendments to the Exchange's rules.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it merely clarifies the operative date of a previously approved rule change. Accordingly, the Commission designates the proposed rule change, as amended, as operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

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–NYSE–2010–12 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–NYSE–2010–12. 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–NYSE–2010–12 and should be submitted on or before March 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4784 Filed 3–5–10; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61614; File No. SR–NYSEAmex–2010–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC as Modified by Amendment No. 1 Thereto Clarifying the Implementation Date of the Amendments to NYSE Amex Equities Rule 123C To Modify the Procedures for Its Closing Process and Make Conforming Changes to NYSE Amex Equities Rules 13 and 15

March 1, 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 February 25, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 1, 2010, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify the implementation date of the amendments to NYSE Amex Equities Rule 123C (Market On The Close Policy And Expiration Procedures) to modify the procedures for its closing process; and make conforming changes to NYSE Amex Equities Rules 13 ("Definitions of Orders") and 15 ("Pre-Opening Indications"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

[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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex LLC ("NYSE Amex" or the "Exchange") submits this filing to clarify the implementation date of amendments to NYSE Amex Equities Rule 123C (Market On The Close Policy And Expiration Procedures) to modify the procedures for its closing process; and make conforming changes to NYSE Amex Equities Rules 13 ("Definitions of Orders") and 15 ("Pre-Opening Indications") approved by the Securities and Exchange Commission on December 23, 2009 ("Close [3] Modifications").[4]

The Exchange notes that similar changes are proposed to the rules of its affiliate, New York Stock Exchange LLC ("NYSE").[5]

Background

In 2009, NYSE Amex implemented changes designed to streamline and improve the efficiency of its closing process, which included establishing a single print for the closing transactions, activating systemic compliance filters for market at-the-close ("MOC") and limit at-the-close ("LOC") orders and enhancing the transparency of its informational data feed for imbalances by including d-Quotes [6] and all other e-Quotes [7] containing pegging instructions eligible to participate in the closing transaction in the NYSE Amex Order Imbalance Information datafeed.[8]

In addition, on December 23, 2009, the SEC approved the Exchanges filing to implement Close Modifications designed to further streamline the closing process, enhance transparency on the close and allow for greater customer participation when there is an imbalance in a security prior to the closing transaction. Pursuant to the Close Modifications, NYSE Amex amended NYSE Amex Equities Rule 123C to: (i) Extend the time for the entry of MOC/LOC orders [9] from 3:40 p.m. to 3:45 p.m.; (ii) amend the procedures for the entry of MOC/LOC orders in response to imbalance publications and regulatory trading halts; (iii) change to the cancellation time for MOC/LOC orders to 3:58 p.m.; (iv) require only one mandatory imbalance publication; (v) rescind the provisions governing Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements; (vi) modify the dissemination of Order Imbalance Information pursuant to NYSE Amex Equities Rule 123C(6) to commence at 3:45 p.m.; (vii) include additional information in both the pre-opening and pre-closing Order Imbalance Information data feeds; (viii) amend NYSE Amex Equities Rule 13 to create a conditional-instruction limit order type called the Closing Offset Order ("CO order"), which may only be used to offset an existing imbalance of orders on the close; (ix) delete the "At the Close" order type from NYSE Amex Equities Rule 13 and replace it with the specific definitions of MOC/LOC orders; and (x) codify the hierarchy of allocation of interest in the closing transaction in NYSE Amex Equities Rule 123(C).

Implementation of Closing Modifications

The Exchange has not made operative the amendments described above. Based on feedback from the member firm community, NYSE Amex has delayed the implementation of the Closing Modifications to March 1, 2010. The Exchange believes that commencing operation of the Closing Modifications on March 1, 2010, will provide participants with additional time to ensure that member firms community will be systemically ready for to comply with the new provisions of the Rule.

The Exchange anticipates that the Close Modifications will be operative in all securities effective March 1, 2010; however, should conditions arise to delay the implementation of the Close Modifications, the Exchange will provide information to its constituents about changes to the start date via its Trader Update Notices that are sent via e-mail to subscribers and posted on the Exchange's Web site.

Deletion of Erroneously Included Text

The Exchange further proposes to delete NYSE Amex Equities Rule 123C(5)(d). Specifically, NYSE Amex Equities Rule 123C(5)(d) is duplicative rule text. It addresses the publication of the Order Imbalance Information data feed in the event of an early close. NYSE Amex Equities Rule 123C(5)(d) is the exact same language as NYSE Amex Equities Rule 123C(6)(a)(v) ("Publication of Order Imbalance Information Data Feed"). The paragraph was inadvertently copied into the wrong section and should therefore be deleted.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [10] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The instant proposal is in keeping with these principles in that it provides transparency to market participants by explaining the anticipated operation date of the Close Modifications and the locations where market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[3] Included in these amendments were conforming changes related to the information disseminated prior to the opening transaction are also proposed in this filing.

[4] See Securities Exchange Release No. 61244 (December 28, 2009), 75 FR 479 (January 5, 2010) (SR–NYSEAmex–2009–81).

[5] See SR–NYSE–2010–12.

[6] See definition of d-Quotes NYSE Amex Equities Rule 70, Supplementary Material .25.

[7] See definition of e-Quotes NYSE Amex Equities Rule 70(a).

[8] See Securities Exchange Release No. 59360 (February 4, 2009), 74 FR 6936 (February 11, 2009) (SR–NYSEALTR–2009–06) (Establishing a single print for the closing transaction). See also, Securities Exchange Release No. 60151 (June 19, 2009), 74 FR 30653 (June 29,2009) (SR–NYSEAmex–2009–29) (Inclusion of d-Quotes and all other e-Quotes containing pegging instructions eligible to participate in the closing transaction NYSE Amex Order Imbalance Information datafeed).

[9] In the NYSE Amex Equities Rules and for the purposes of this discussion, the terms "market-on-close" and "limit-on-close" are used interchangeably with "market-at-the-close" and "limit-at-the-close".

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[13] However, pursuant to Rule 19b4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[14] which would make the rule change operative immediately. The Exchange believes that waiver of the operative delay is appropriate because the proposed rule change is merely a clarification of the operative date of previously approved amendments to the Exchange's rules.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it merely clarifies the operative date of a previously approved rule change. Accordingly, the Commission designates the proposed rule change, as amended, as operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

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–NYSEAmex–2010–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–17. 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–NYSEAmex–2010–17 and should be submitted on or before March 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4785 Filed 3–5–10; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE Amex has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61619; File No. SR–NYSEAmex–2010–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Amend Its Price List

March 1, 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 February 26, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2010 Price List to specify that executions of Closing Offset ("CO") orders will be free of charge. The text of the proposed rule change is available at the Exchange. the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has recently amended Exchange Rule 123C to, among other things, establish a new Closing Offset ("CO") order.[3] The CO order is a conditional-instruction limit order that is eligible to participate in the closing transaction to offset an order imbalance at the close. The CO order is not guaranteed to participate in the closing transaction but is eligible to participate when there is an imbalance of orders to be executed on the opposite side of the market from the CO order and there is no other interest remaining to trade at the closing price. The Exchange does not propose to charge transaction fees with respect to the execution of CO orders and proposes to amend its 2010 price list to make this policy explicit. The Exchange will commence using the CO order type on March 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges, as all Exchange participants have the ability to enter CO orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–20. 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,[8] 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 tomake available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–20 and should be submitted on or before March 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4765 Filed 3–5–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61613; File No. SR–NYSE–2010–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Amend the Exchange Price List

March 1, 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 February 26, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2010 Price List to specify that executions of Closing Offset ("CO") orders will be free of charge. The text of the proposed rule change is available on the Exchange's Web site (*http://*

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[3] *See* Securities Exchange Act Release No. 61244 (December 28, 2009), 75 FR 479 (January 5, 2010) (SR–NYSEAmex–2009–81).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml*.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

www.nyse.com), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has recently amended Exchange Rule 123C to, among other things, establish a new Closing Offset ("CO") order.[3] The CO order is a conditional-instruction limit order that is eligible to participate in the closing transaction to offset an order imbalance at the close. The CO order is not guaranteed to participate in the closing transaction but is eligible to participate when there is an imbalance of orders to be executed on the opposite side of the market from the CO order and there is no other interest remaining to trade at the closing price. The Exchange does not propose to charge transaction fees with respect to the execution of CO orders and proposes to amend its 2010 price list to make this policy explicit. The Exchange will commence using the CO order type on March 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6[4] of the Act in general and furthers the objectives of Section 6(b)(4)[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges, as all Exchange participants have the ability to enter CO orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(f)(2)[7] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2010–14 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–NYSE–2010–14. 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,[8] 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–NYSE–2010–14 and should be submitted on or before March 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4764 Filed 3–5–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61620; File No. SR–DTC–2010–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Registered Transfer Agent Notification Methods for Assumption or Termination of Services

March 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 3, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

[3] *See* Securities Exchange Act Release No. 61233 (December 23, 2009), 74 FR 69169 (December 30, 2009) (SR–NYSE–2009–111).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml*.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

III below, which Items have been prepared primarily by DTC. DTC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify the registered transfer agent notification methods for assumption or termination of services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 17Ad–16 under the Act is designed to help reduce delays in securities transfers. The rule requires registered transfer agents to notify the appropriate qualified registered securities depository when the transfer agent assumes or terminates services on behalf of an issuer or when the transfer agent changes its name or address.

In 1995, DTC filed a proposed rule change with the Commission in which DTC requested designation as the appropriate qualified registered securities depository for purposes of Rule 17Ad–16 and also sought approval of its procedures to receive and transmit such notices. The Commission approved the rule filing and ordered that DTC be designated as the appropriate qualified registered securities depository.[5] Existing DTC Procedures allow transfer agents to provide their notices to DTC by e-mail to DTC's Transfer Agent Services Mailbox, by fax, or by mail.

To increase certainty regarding where transfer agents should direct these notices to DTC, as well as to reduce costs and administrative burdens, DTC proposes modifying its Procedures so that registered transfer agents would only notify DTC by sending e-mails to DTC's Transfer Agent Services Mailbox. The proposed changes to DTC's Procedures can be found in Exhibit 5 to proposed rule change SR–DTC–2010–04 at *http://www.dtcc.com/downloads/legal/rule_filings/2010/dtc/2010-04.pdf*

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to DTC because the proposed rule change promotes efficiencies in the clearance and settlement of securities transactions by modifying DTC's Procedures to expedite the notification process for transfer agent changes and decrease transfer delays.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Electronic comments may be submitted by using the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*, or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–DTC–2010–04 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–DTC–2010–04. 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 Section, 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 filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/legal/rule_filings/dtc/2010.php*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] Securities Exchange Release Act No. 35378 (February 15, 1995), 60 FR 9875 (February 22, 1995) (File No. SR–DTC–95–02).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

submissions should refer to file number SR–DTC–2010–04 and should be submitted on or before March 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4763 Filed 3–5–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61606; File No. SR–NASDAQ–2010–026]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Erroneous Citations From Rule 9557

March 1, 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 February 24, 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 Substance of the Proposed Rule Change

Nasdaq is proposing to eliminate erroneous citations found under Rule 9557. The text of the proposed rule change is below. Proposed new language is in italics and proposed deletions are in brackets.

9557. Procedures for Regulating Activities Under Rules 4110A[,] *and* 4120A [and 4130A] Regarding a Member Experiencing Financial or Operational Difficulties

(a) Notice of Requirements and/or Restrictions; Nasdaq Action

Nasdaq Regulation staff may issue a notice directing a member to comply with the provisions of Rule 4110A[,] *or* 4120A [or 4130A]or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Rule 4110A[,] *or* 4120A [or 4130A], if Nasdaq Regulation staff has reason to believe that a condition specified in Rule 4110A[,] *or* 4120A [or 4130A] exists. A notice served under this Rule shall constitute Nasdaq action.

(b)–(f) No change.

(g) Additional Requirements and/or Restrictions or the Removal or Reduction of Requirements and/or Restrictions; Letter of Withdrawal of the Notice

(1) Additional Requirements and/or Restrictions

If a member continues to experience financial or operational difficulty specified in Rule 4110A or 4120A [or 4130A], notwithstanding an effective notice, Nasdaq Regulation staff may impose additional requirements and/or restrictions by serving an additional notice under paragraph (b) of this Rule. The additional notice shall inform the member that it may apply for relief from the additional requirements and/or restrictions by filing a written request for a letter of withdrawal of the notice and/or a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such additional notice.

(2) No change.

(A)–(B) No change.

(h) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. 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 erroneous citations found under Rule 9557. Many of Nasdaq's rules are based on rules of Financial Industry Regulatory Authority ("FINRA"). Nasdaq endeavors to keep these common rules consistent with the analogous rules of FINRA, to the extent possible. FINRA recently adopted new consolidated financial responsibility rules found under a new FINRA Rule 4000 series.[3] On January 20, 2010, Nasdaq filed a proposed rule change to make conforming changes to its rules, which included the adoption of a new Rule 4000A series[4] and certain amendments to Rules 9557 and 9559.[5] The proposed changes were immediately effective, and became operative on February 19, 2010. In adopting the new consolidated rules, FINRA eliminated Rule 3131 and in its place adopted a new Rule 4130 that concerns the regulation of activities of Section 15C members experiencing financial and/or operational difficulties and made conforming changes to citations found under FINRA Rule 9557. Section 15C of the Exchange Act[6] applies to government securities brokers and dealers, which does not apply to Nasdaq's membership as no such class of membership exists under Nasdaq rules. As a consequence, Nasdaq did not adopt an analogous Rule 4130A. In revising citations in Rule 9557, however, Nasdaq inadvertently included erroneous references to Rule 4130A. Accordingly, Nasdaq is proposing to eliminate the erroneous references to Rule 4130A found in Rule 9557.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general and with Section 6(b)(5) of the Act,[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change corrects certain erroneous citations inadvertently included in Rule 9557 when adopting the new Rule 4000A series.

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.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (SR–FINRA–2008–067).

[4] Nasdaq currently has rules under its 4000 series, so to mirror the changes made by FINRA as closely as possible, Nasdaq created a new Rule 4000A series.

[5] *See supra*, note 3.

[6] 15 U.S.C. 78o–5.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. 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)[9] of the Act and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. Nasdaq has provided 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.

Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it merely eliminates erroneous citations that, if left in the rule text, would cause investor confusion.

Nasdaq requests that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b–4(f)(6)(iii).[11] Nasdaq requests this waiver so that these corrections can be both immediately effective and operative, thus minimizing any confusion that may be caused by the erroneous citations. The Commission notes the proposed rule changes make technical non-substantive changes to Rule 9557. As noted above on January 20, 2010, Nasdaq filed a proposed rule change to make conforming changes to its rules, which included adopting a new Rule 4000A series[12] and certain amendments to Rules 9557 and 9559.[13] The proposed changes were immediately effective and became operative on February 19, 2010. The Commission believes the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits Nasdaq to implement the rule without further delay and in a timely manner for the operative date of the financial responsibility rules.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–2010–026 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–2010–026. 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 Number SR–NASDAQ–2010–026 and should be submitted on or before March 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4734 Filed 3–5–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] Nasdaq currently has rules under its 4000 series, so to mirror the changes made by FINRA as closely as possible, Nasdaq created a new Rule 4000A series.

[13] *See supra*, note 3.

[14] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61618; File No. SR–NSCC–2010–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Eliminate Guarantee of Payment in Connection With the Envelope Settlement Service

March 1, 2010.

I. Introduction

On January 4, 2010, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–NSCC–2010–01 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 January 29, 2010.[2] No comment letters were received on the proposal. This order approves the proposal.

II. Description

NSCC's the Envelope Settlement Service ("ESS") allows an NSCC member to physically deliver through the facilities of NSCC a sealed envelope[3] containing securities and such other items as NSCC may permit from time to time to a specified receiving member. NSCC then delivers the envelope to the receiving member. ESS is provided for

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 61415 (January 25, 2010), 75 FR 4896.

[3] Rule 9 provides that except as NSCC may determine to be appropriate or necessary, NSCC will not examine the contents of the envelopes or verify the amounts of money shown on the credit list, and it shall not be responsible with respect thereto except to deliver the envelopes accepted by it to the authorized representatives of the members to whom they are addressed.

primarily pursuant to Rule 9 and Addendum D with related provisions in Addendum D with related provisions in Addendum K and Procedure XV. The primary substantive changes of this proposed rule change are in Rule 9, Addendum D, and Addendum K with a conforming change to Procedure XV. Technical clean-up changes are also being made in each.

The delivering member must attach to each envelope, a credit list (in duplicate), which reflects the total money value, if any, of the envelope's contents. If after receipt of the envelope NSCC determines that the envelope is properly listed on the accompanying credit list, NSCC stamps the duplicate credit list and makes it immediately available to the delivering member's representative. An envelope listed on the credit list shall be deemed to have been accepted by NSCC when the duplicate credit list is stamped.

As a related feature of ESS, the payment shown on the credit list is processed as part of the members' daily end of day net money settlement obligations in reliance on the agreement between the delivering and receiving parties outside NSCC that the amount listed is the contract amount.

In order to protect the NSCC against the risk of member non-payment NSCC is amending Rule 9 and related provisions so that NSCC does not guarantee the payment obligation to the receiving member in an ESS delivery and so that the credits and debits of the payment amount of an envelope may be reversed. The payment reversal may be effected by NSCC even if the receiving member has taken possession of the envelope; however, if the receiving member has not yet taken possession of the envelope at the time of a payment reversal, NSCC will return the envelope to the delivering member. Any dispute between the delivering and receiving members must be resolved by them outside the facilities of the NSCC.

Changes to Rule 9 affirmatively provide that NSCC does not guarantee the payment obligation in ESS and that payment credits and debits may be reversed. Technical and conforming changes clarify the concepts of delivering and receiving members and that settlement processing is subject not only to the rights of NSCC in Section 2 of Rule 12 but also to the new reversal provision in Section 4 of Rule 9.

To conform to amended Rule 9, Addendum D is similarly being amended to state that ESS is not guaranteed and that payment credits and debits may be reversed as provided in Rule 9. Language making it clear that settlement processing is subject to the rights of NSCC under new Section 4 of Rule 9 and Section 2 of Rule 12, was also carried over to Addendum D. Because Addendum D also covers other services for which no change is made by this filing, certain of the revisions to Addendum D clarify that the revisions are limited to ESS. Historical statements in Addendum D are being eliminated.

The change to Addendum K is to delete the provision whereby NSCC provided a guarantee for ESS and thereby deemed ESS to be a "System" within the meaning of Rule 4. Without the guarantee, ESS is not considered to be a "System." Consistent with the change, Procedure XV is modified so that when the clearing fund component titled "For Other Transactions" (that is, for other than CNS transactions and balance order transactions) is computed, ESS will not be included.

In considering the elimination of the guarantee, NSCC surveyed selected members and learned that they did not consider it vital that NSCC be responsible for their ESS payment obligations and that they do not rely on the NSCC to guarantee such payments. However, these members expressed a strong desire for NSCC to maintain the centralized delivery service. NSCC designed the proposed rule changes to meet the expressed need of certain members while reducing risk to NSCC and its members generally. NSCC believes that it is shifting the burden of risk to those that should bear it and to outside NSCC's facilities.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[4] and the rules and regulations thereunder applicable to NSCC. In particular, the Commission believes that by amending its rules, NSCC's exposure to potential losses from member defaults, insolvencies, mistakes, and fraud will be reduced and the risk of such potential losses will be appropriately shifted to the contracting members in an ESS transaction outside NSCC. The proposal is therefore consistent with the requirements of Section 17A(b)(3)(F),[5] which requires, among other things, that the rules of a clearing agency are designed to promote 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[6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NSCC–2010–01) be, and hereby is, approved.[8]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4738 Filed 3–5–10; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(2).

[8] 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).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61612; File No. SR–NYSE–2010–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 123C(9)(a)(1) To Extend the Operation of the Pilot Operating Pursuant the Rule Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or June 1, 2010

March 1, 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 February 24, 2010, New York Stock Exchange LLC ("NYSE" 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

The Exchange proposes to amend NYSE Rule 123C(9)(a)(1) to extend the operation of the pilot operating pursuant the Rule until the earlier of Securities and Exchange Commission approval to make such pilot permanent or June 1, 2010. The text of the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The New York Stock Exchange ("NYSE" or the "Exchange") proposes to amend NYSE Rule 123C(9)(a)(1)[3] to extend the operation of the pilot operating pursuant the Rule until the earlier of Securities and Exchange Commission approval to make such pilot permanent or June 1, 2010.

NYSE Rule 123C(9)(a)(1) allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The rule has operated on a pilot basis since April 2009 ("Extreme Order Imbalances Pilot" or "Pilot").[4] Through this filing, NYSE proposes to extend the Pilot until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or June 1, 2010.[5]

Background

Pursuant to NYSE Rule 123C(9)(a)(1), the Exchange may suspend NYSE Rules 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close. The provisions of NYSE Rule 123C(9)(a)(1) operate as the Extreme Order Imbalance Pilot.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How often a Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4 p.m.

The Extreme Order Imbalance Pilot is scheduled to end operation on March 1, 2010.[6] The Exchange is currently preparing a rule filing seeking permission to make the provisions of the Pilot permanent with certain modifications but does not expect that filing to be completed and approved by the Commission before March 1, 2010.

Proposal To Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a mechanism for ensuring a fair and orderly close when interest is received at or near the close that could negatively affect the closing transaction. The Exchange believes that this tool has proved very useful to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.

As the Exchange has previously stated, NYSE Rule 123C(9) will be invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price. This is evidenced by the fact that during the course of the Pilot, the Exchange invoked the provisions of NYSE Rule 123C(9), including the provisions of the Extreme Order Imbalance Pilot pursuant to NYSE Rule 123C(9)(a)(1), on four occasions.

In addition, during the operation of the Pilot, the Exchange determined that it would not be as onerous as previously believed to modify Exchange systems to accept orders electronically after 4:00 p.m. The Exchange has completed the system modifications and is now in the process of testing the modifications. The Exchange anticipates that its quality assurance review process will be completed by June 1, 2010.

Given the above, the Exchange believes that provisions governing the Extreme Order Imbalance Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the Pilot in order to allow the Exchange to formally submit a filing to the Commission to convert the provisions governing the Pilot to permanent rules and complete the technological modifications required to accept orders electronically after 4 p.m. The Exchange therefore requests an extension from the current expiration date of March 1, 2010, until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or June 1, 2010.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles. Specifically an extension will allow the Exchange to: (i) Prepare and submit a filing to make the provisions governing the Extreme Order Imbalance Pilot permanent; (ii) have such filing complete public notice and comment period; and (iii) complete the 19b–4 approval process. The rule operates to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section

[3] *See* Securities Exchange Release No. 61233 (December 23, 2009), 74 FR 69169 (December 30, 2009) (SR–NYSE–2009–111) (Modify the closing process and renumbering 123C(8) to 123C(9)). The Exchange anticipates operation of these changes to commence on or about March 1, 2010.

[4] *See* Securities Exchange Act Release No. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR–NYSE–2009–18).

[5] The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. *See* SR–NYSEAmex–2010–15.

[6] *See* Securities and Exchange Act Release No. 61264 (December 31, 2009), 75 FR 1107 (January 8, 2010) (SR–NYSE–2009–131) (extending the operation of the pilot from December 31, 2009 to March 1, 2010).

[7] 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[11] which would make the rule change operative immediately. The Exchange believes that continuation of the Pilot does not burden competition and would operate to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Pilot to continue without interruption while the Exchange works towards submitting a separate proposal to make the Pilot permanent. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

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–NYSE–2010–11 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–NYSE–2010–11. 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,[14] 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–NYSE–2010–11 and should be submitted on or before March 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4736 Filed 3–5–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml*.

[15] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0011]

Occupational Information Development Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Upcoming Quarterly Panel Meeting.

DATES: March 24, 2010, 8:30 a.m.–3 p.m. (CST); March 25, 2010, 8:30 a.m.–11:30 a.m. (CST).

Location: Sheraton St. Louis City Center.

ADDRESS: 400 South 14th Street, St. Louis, MO 63103.

By Teleconference: 1–866–283–8275.

SUPPLEMENTARY INFORMATION: *Type of meeting:* The meeting is open to the public.

Purpose: This discretionary Panel, established under the Federal Advisory Committee Act of 1972, as amended, shall report to the Commissioner of Social Security. The Panel will provide independent advice and recommendations on plans and activities to replace the Dictionary of Occupational Titles used in the Social Security Administration's (SSA) disability determination process. The Panel will advise the Agency on creating an occupational information system tailored specifically for SSA's disability programs and adjudicative needs. Advice and recommendations will relate to SSA's disability programs in the following areas: Medical and vocational analysis of disability claims; occupational analysis, including definitions, ratings and capture of physical and mental/cognitive demands of work and other occupational information critical to SSA disability programs; data collection; use of occupational information in SSA's disability programs; and any other area(s) that would enable SSA to develop an occupational information system suited to its disability programs and improve the medical-vocational adjudication policies and processes.

Agenda: The Panel will meet on Wednesday, March 24, 2010, from 8:30 a.m. until 3 p.m. (CST) and Thursday, March 25, 2010, from 8:30 a.m. until 11:30 a.m. (CST). The agenda will be available on the Internet at *http://www.socialsecurity.gov/oidap/* one week prior to the meeting.

The tentative agenda for this meeting includes: presentations by invited stakeholder organizations for the purpose of receiving feedback on the Panel's recommendations identified in the report entitled *Content Model and Classification Recommendations for the Social Security Administration Occupational Information System (September 2009)* and related issues of concern in areas where additional or new occupational information is needed; a presentation on the status on the SSA FY 2010 Occupational Information System Development Project activities and the proposed integration with Panel activities; subcommittee chair reports; individual and organizational public comment; Panel discussion and deliberation, and an administrative business meeting.

The Panel will hear public comment during the Quarterly Meeting on Wednesday, March 24, 2010, from 2 p.m. to 3 p.m. (CST) and Thursday, March 25, 2010, from 8:45 a.m. to 9:15 a.m. (CST). Members of the public must reserve a time slot—assigned on a first come, first served basis—in order to comment. In the event public comment does not take the entire time allotted, the Panel may use any remaining time to deliberate or conduct other Panel business.

Those interested in providing testimony in person at the meeting or via teleconference should contact the Panel staff by e-mail to *OIDAP@ssa.gov*. Persons providing testimony are limited to a maximum five minute, verbal presentation. Organizational representatives will be allotted a maximum ten minute, verbal presentation. Written testimony, no longer than five (5) pages, may be submitted at any time either in person or by mail, fax or e-mail to *OIDAP@ssa.gov* for Panel consideration.

The comment period for the Panel's report entitled *Content Model and Classification Recommendations for the Social Security Administration Occupational Information System (September 2009)* is extended to May 21, 2010. Persons interested in providing feedback may do so by mail, fax or e-mail to the staff. Please include your complete contact information (full name, mailing and e-mail addresses) with the submission.

Seating is limited. Those needing special accommodation in order to attend or participate in the meeting (e.g., sign language interpretation, assistive listening devices, or materials in alternative formats, such as large print or CD) should notify Debra Tidwell-Peters via e-mail to *debra.tidwell-peters@ssa.gov* or by telephone at 410–965–9617, no later than March 17, 2010. SSA will attempt to meet requests made but cannot guarantee availability of services. All meeting locations are barrier free.

For telephone access to the meeting on March 24 and March 25, please dial 1–866–283–8275.

Contact Information: Records of all public Panel proceedings are maintained and available for inspection. Anyone requiring further information should contact the Panel staff at: Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, 3–E–26 Operations, Baltimore, MD 21235–0001. *Telephone:* 410–965–9617. Fax: 202–410–597–0825. E-mail to *OIDAP@ssa.gov*. For additional information, please visit the Panel Web site at *http://www.ssa.gov/oidap*.

Dated: March 1, 2010.

Debra Tidwell-Peters,

Designated Federal Officer, Occupational Information Development Advisory Panel.

[FR Doc. 2010–4760 Filed 3–5–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6373]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Tuesday, March 23, 2010, at the offices of the Radio Technical Commission for Maritime Services (RTCM), 1800 N. Kent Street, Suite 1060, Arlington, VA 22209. The primary purpose of the meeting is to prepare for the fifty-fourth Session of the International Maritime Organization (IMO) Subcommittee on Fire Protection (FP) to be held at the IMO Headquarters, United Kingdom, from April 12 to April 16, 2010.

The primary matters to be considered include:

— Performance testing & approval standards for fire safety systems

—Comprehensive review of the fire test procedures code

—Fire resistance of ventilation ducts

—Measures to prevent explosions on oil and chemical tankers transporting low flash point cargoes

—Clarification of SOLAS chapter II–2 requirements regarding interrelationship between central control station and safety centre

—Explanatory notes for the application of the safe return to port requirements

—Recommendation on evacuation analysis for new and existing passenger ships

—Consideration of IACS unified interpretations

—Fixed hydrocarbon gas detection systems on double-hull tankers

—Harmonization of the requirements for the location of entrances, air inlets and openings in the superstructure of tankers

—Amendments to chapter II–2 related to the releasing controls and means of escape for spaces protected by fixed carbon dioxide systems

—Means of escape from machinery spaces

—Review of fire protection for on-deck cargoes

—Revision of the Recommendations for entering enclosed spaces aboard ships

—Fire integrity of bulkheads and decks of ro-ro spaces on passenger and cargo ships

—Requirements for ships carrying hydrogen and compressed natural gas vehicles

—Guidelines for a visible element to general emergency alarm systems on passenger ships

—Means for recharging air bottles for air breathing apparatuses

—Any other business

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should contact the meeting coordinator, Mr. Randall Eberly, by e-mail at *randall.eberly@uscg.mil*, by phone at (202) 372–1393, by fax at (202) 372–1925, or in writing at Commandant (CG–5214), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126. A member of the public requesting reasonable accommodation should make such request prior to March 16, 2010, 7 days prior to the meeting. Requests made after this date may not be able to be accommodated. RTCM Headquarters is adjacent to the Rosslyn Metro station. For further directions and lodging information, *please see: http://www.rtcm.org/visit.php*. Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo*.

Dated: March 2, 2010.

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2010–4853 Filed 3–5–10; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2010–0054]

RIN 2105–AD04

Application To Renew Information Collection Request OMB No. 2105–0551

AGENCY: Office of the Secretary, Department of Transportation (Department).

ACTION: Notice and request for comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department's intention to apply to the Office of Management and Budget (OMB) to renew approval of the information collection request (ICR) OMB No. 2105–0551, "Reporting Requirements for Disability-Related Complaints." The current information collection request approved by OMB expires August 31, 2010.

DATES: Comments on this notice must be received by May 7, 2010.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2010–xxxxx] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* West Building, Ground Floor, Rm. W–12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001 (between 9 a.m. and 5 p.m. EST, Monday through Friday, except on Federal holidays).

FOR FURTHER INFORMATION CONTACT: Vinh Q. Nguyen or Blane A. Workie, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, 20590, 202–366–9342 (Voice), 202–366–7152 (Fax), or *vinh.nguyen@dot.gov* or *blane.workie@dot.gov* (E-mail). Arrangements to receive this document in an alternative format may be made by contacting the above-named individuals.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Disability-Related Complaints.

OMB Control Number: 2105–0551.

Type of Request: Renewal of currently approved Information Collection Request.

Background: On July 8, 2003, the Office of the Secretary published a final rule that requires most certificated U.S. and foreign air carriers operating to, from and within the U.S. that conduct passenger-carrying service utilizing large aircraft to record complaints that they receive alleging inadequate accessibility or discrimination on the basis of disability. The carriers must also categorize these complaints according to the type of disability and nature of complaint, prepare a summary report annually of the complaints received during the preceding calendar year, submit the report to the Department's Aviation Consumer Protection Division, and retain copies of correspondence and records of action taken on the reported complaints for three years. The rule requires carriers to submit their annual report via the World Wide Web except if the carrier can demonstrate an undue burden in doing so and receives permission from the Department to submit it in an alternative manner. The first required report covering calendar year 2004 was due to the Department on January 24, 2005, the second report covering calendar year 2005 was due on January 30, 2006, the third report covering calendar year 2006 was due on January 29, 2007, the fourth report covering calendar year 2007 was due on January 28, 2008, and the fifth report covering calendar year 2008 was due on January 26, 2009. Subsequent reports of disability-related complaints received by carriers are due each year on the last Monday in January for the prior calendar year. On August 24, 2007, OMB approved information collection of disability-related complaints, "Reporting Requirements for Disability-related Complaints" through August 31, 2010.

Respondents: Certificated U.S. and foreign air carriers operating to, from, and within the United States that conduct passenger-carrying service with large aircraft.

Estimated Number of Respondents: 370.

Estimated Total Burden on Respondents: 185 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on March 3, 2010.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation.

[FR Doc. 2010–4852 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 695X)]

CSX Transportation, Inc.—Abandonment Exemption—in Jefferson County, NY

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.24-mile rail line, known as the Roe Feed Industrial Track, on its Northern Region, Albany Division, St. Lawrence Subdivision, from milepost QMC 87.2 to the end of track at milepost QMC 87.44, in Philadelphia, Jefferson County, NY. The line traverses United States Postal Service Zip Code 13673, and there are no stations on the line.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 7, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 18, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 29, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Kathryn R. Barney, 500 Water Street—J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 12, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by March 8, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV*."

Decided: March 1, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–4657 Filed 3–5–10; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The date of manufacture and compliance status stamped on a nameplate of each turbojet engine permits rapid determination by FAA inspectors, owners, and operators whether an engine can legally be installed and operated on an aircraft in the United States.

DATES: Please submit comments by May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0508.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 1,200 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 100 hours annually.

Abstract: The date of manufacture and compliance status stamped on a nameplate of each turbojet engine permits rapid determination by FAA inspectors, owners, and operators whether an engine can legally be installed and operated on an aircraft in the United States. The information is to be used by FAA inspectors, purchasers, owners, and operators periodically, during the course of the year, to confirm that the engines meet U.S. EPA pollution requirements in lieu of searching through extensive paper records.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 25, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–4873 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Report of Inspections Required by Airworthiness Directives, Part 39

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Airworthiness directives are regulations issued to require correct corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition. The respondents are aircraft owners and operators.

DATES: Please submit comments by May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Report of Inspections Required by Airworthiness Directives, Part 39.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0056.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 1,120 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 2,800 hours annually.

Abstract: Airworthiness directives are regulations issued to require correct corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition. The respondents are aircraft owners and operators.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 25, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–4871 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Pilot Records Improvement Act of 1996

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Title 49 U.S.C. 44703(h) mandates that all U.S. air carriers operating under 14 CFR parts 121 or 135, and all U.S. air operators under 14 CFR part 125, and certain others, request and receive certain training, safety, and testing records before extending a firm offer of employment to an individual who is applying to their company as a pilot.

DATES: Please submit comments by May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilot Records Improvement Act of 1996.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0607.

Forms(s): 8060–10, 8060–10A, 8060–11, 8060–11A, 8060–12, 8060–13.

Affected Public: A total of 18,263 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 2.5 hours per response.

Estimated Annual Burden Hours: An estimated 45,655 hours annually.

Abstract: Title 49 U.S.C. 44703(h) mandates that all U.S. air carriers operating under 14 CFR parts 121 or 135, and all U.S. air operators under 14 CFR part 125, and certain others, request and receive certain training, safety, and testing records before extending a firm offer of employment to an individual who is applying to their company as a pilot. These records are to be requested from the FAA, from any employer(s) from the previous 5-year period that used the applicant as a pilot, and from the National Driver Registry.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 25, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–4875 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Certification and Operation FAR 125

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Part A of Subtitle VII of the Revised Title 49 United States Code authorizes the issuance of regulations governing the use of navigable airspace. 14 CFR Part 125 prescribes requirements for leased aircraft, Aviation Service Firms, and Air Travel.

DATES: Please submit comments by May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Certification and Operation FAR 125.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0085.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 163 respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 1.33 hours per response.

Estimated Annual Burden Hours: An estimated 61,388 hours annually.

Abstract: Part A of Subtitle VII of the Revised Title 49 United States Code authorizes the issuance of regulations governing the use of navigable airspace. 14 CFR Part 125 prescribes requirements for leased aircraft, Aviation Service Firms, and Air Travel. A letter of application and related documents which set forth an applicant's ability to conduct operations in compliance with the provisions of FAR Part 125 are submitted to the appropriate Flight Standards District Office (FSDO). Inspectors in FAA FSDO's review the submitted information to determine certificate eligibility.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on February 25, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–4872 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Washington, DC Metropolitan Area Special Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This information collection is required for compliance with the final rule that codifies special flight rules and airspace and flight restrictions for certain operations in the Washington, DC Metropolitan Area. OMB has granted this collection a six-month clearance expiring in August, 2010, in order for FAA to provide clarifying details about the collection methods; this notice is to correspond with an immediate resubmission to OMB for full three-year clearance.

DATES: Please submit comments by May 7, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Washington, DC Metropolitan Area Special Flight Rules.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0706.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 17,097 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 2.9 hours per response.

Estimated Annual Burden Hours: An estimated 49,223 hours annually.

Abstract: This information collection is required for compliance with the final rule that codifies special flight rules and airspace and flight restrictions for certain operations in the Washington, DC Metropolitan Area.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 2, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–4848 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 470X)]

BNSF Railway Company—Discontinuance of Trackage Rights Exemption—in Peoria and Tazewell Counties, IL

On February 16, 2010, BNSF Railway Company (BNSF) filed with the Surface

Transportation Board (Board) a petition under U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue overhead trackage rights over approximately 3 miles of rail line owned by Peoria and Pekin Union Railway Company, between Bridge Junction in Peoria and P&PU Junction in East Peoria, in Peoria and Tazewell Counties, IL.[1] The line traverses United States Postal Service Zip Codes 61602 and 61611.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 4, 2010.

Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8(b).

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB–6 (Sub-No. 470X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Karl Morell, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before March 29, 2010.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV*."

Decided: March 4, 2010.

[1] There are no known mileposts associated with the line.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–4953 Filed 3–5–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of Rail Energy Transportation Advisory Committee Meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C., App. 2).

DATES: The meeting will be held on Tuesday, March 23, 2010, beginning at 2 p.m., E.D.T.

ADDRESSES: The meeting will be held in the Hearing Room on the first floor of the Surface Transportation Board's headquarters at Patriot's Plaza, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman (202) 245–0202. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.

SUPPLEMENTARY INFORMATION: RETAC arose from a proceeding instituted by the Board, in *Establishment of a Rail Energy Transportation Advisory Committee*, STB Ex Parte No. 670. RETAC was formed to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues regarding the transportation by rail of energy resources, particularly, but not necessarily limited to, coal, ethanol, and other biofuels. The purpose of this meeting is to continue discussions regarding issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items include updates from the RETAC subcommittees (Best Practices, Capacity Planning, Communication, and Performance Measures), a briefing by the Energy Information Administration on its Annual Energy Outlook 2010, and a briefing by Christensen Associates on its updated study of competition in the railroad industry.

The meeting, which is open to the public, will be conducted pursuant to RETAC's charter and Board procedures. Further communications about this meeting may be announced through the Board's Web site at *http://www.stb.dot.gov*.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: March 3, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–4863 Filed 3–5–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Wednesday, April 14, 2010, starting at 8:30 a.m. Pacific Standard Time. Arrange for oral presentations by April 1, 2010.

ADDRESSES: FAA–Northwest Mountain Region Office, Transport Standards Staff conference room, 1601 Lind Ave., SW., Renton, WA 98057.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3168, Fax (202) 267–5075, or e-mail at *ralen.gao@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held April 14, 2010.

The agenda for the meeting is as follows:

- Opening Remarks, Review Agenda and Minutes.
- FAA Report.

- Airplane-level Safety Analysis WG Report.
- Task 4 Status/Vote.
- EXCOM Report.
- Transport Canada Report.
- Airworthiness Assurance HWG Report.
- Avionics HWG Report.
- Any Other Business.
- Action Item Review.

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than April 1, 2010. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, PLEASE CONTACT Ralen Gao by e-mail or phone for the teleconference call-in number and passcode. Anyone calling from outside the Renton, WA, metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by April 1, 2010, to present oral statements at the meeting. Written statements may be presented to the ARAC at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the documents to be presented to ARAC may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on March 2, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2010–4792 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixth Meeting—RTCA Special Committee 217: Joint With EUROCAE WG–44 Terrain and Airport Mapping Databases

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases.

DATES: The meeting will be held on April 12th thru 16th, 2010, at 9 a.m.

ADDRESSES: The meeting will be held at Graf-Zeppelin-Haus (*http://www.gzh.de*), Kapitän Lehmann Raum, Olgastr. 20, D–88045 Friedrichshafen/Germany. Contact: *Britta Eilmus Britta.Eilmus@avitech-ag.com* Phone: +49–69–6060–9894, Mobile: +49–179–789–5474, Fax: +49–7541–282–199

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases meeting. The agenda will include:

Monday, April 12

- Opening Plenary Session
  - Chairmen's remarks and introductions
  - Approve minutes from previous meeting
  - Review and approve meeting agenda
  - Committee Membership Records
  - Schedule for this week
  - Action Item Review
  - Schedule for next meetings
- Presentations (Not linked to Working Group Activity)
  - Tim Roe: FAA activity with taxi route databases, tied to SC–214
  - Garry Livack, Update on related Standards activities, i.e. D–NOTAM (Aerodrome), D-Taxi, D-Traffic
  - André Bourdais, Proposal for Joint Task Force, SC–217/SC–214; data exchange requirements
  - Allan Hart, SESAR WP9
- Working Group Report Outs (Status)
  - Applications
  - Data Quality—Non-Numeric Requirements
  - Data Quality—Numeric Requirements
  - Guidance Materials
  - Temporality
  - Content
  - Connectivity

Tuesday, April 13

- Specific Working Group Sessions
  - Connectivity
  - Content
  - Applications
  - Numerical Requirements
  - Guidance Materials
  - Data Quality

Wednesday, April 14

- Continuation of Specific Working Group Sessions (if required)—
- Committee Coordination
  - SC–186 ISRA Review and Response Planning
  - SC–214 Requirements Review and Response Planning

Thursday, April 15

- Document Agreements
  - DO–272, Revision C
  - DO–291, Revision B
  - DO–276, Revision B
  - Road Map Review

Friday, April 16

- Closing Plenary Session
  - Joint RTCA SC–217/EUROCAE WG–44

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 2, 2010

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–4847 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Chandler Municipal Airport, Chandler, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by City of Chandler, for Chandler Municipal Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is February 19, 2010.

FOR FURTHER INFORMATION CONTACT: Roxana Hernandez, Federal Aviation Administration, Los Angeles Airports District Office, 15000 Aviation Boulevard, Lawndale, CA 90261, (310) 725–3614.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Chandler Municipal Airport are in compliance with applicable requirements of 14 Code of Federal Regulations (CFR) Part 150 (hereinafter referred to as "Part 150"), effective February 19, 2010. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the City of Chandler. The documentation that constitutes the "Noise Exposure Maps" as defined in section 150.7 of Part 150 includes the 2009 and 2014 Noise Exposure Maps. The 2014 Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configurations, land uses such as residential, open space, commercial/office, community facilities, libraries, churches, infrastructure, vacant and warehouse and those areas within the Yearly Day-Night Average Sound Level (DNL) 65, 70 and 75 noise contours. Estimates for the number of people within these contours for the year 2009 are shown in Table 6.5. Estimates of the future residential population within the 2014 noise contours are shown in Table 6.6. Flight tracks for the existing and the five-year Noise Exposure Maps are found in Figures 5.1–5.4. The type and frequency of aircraft operations including nighttime operations are found in Tables 5.1–5.4. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on February 19, 2010.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Lawndale, CA 90261;

Federal Aviation Administration, Los Angeles Airports District Office, Room 3000, 15000 Aviation Boulevard, Lawndale, CA 90261;

Greg Chenoweth, Airport Manager, Chandler Municipal Airport, 2380 South Stinson Way, Chandler, AZ 85249.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on February 19, 2010.

Debbie Roth,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 2010–4849 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–04]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before March 29, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–1247 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenna Sinclair, ANM–113, (425) 227–1556, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Brenda Sexton, (202–267–3664), Office of Rulemaking (ARM–204), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 2, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–1247.

Petitioner: Embraer.

Section of 14 CFR Affected: §§ 26.11, 26.33, 26.35, 26.43, 26.45, and 26.49, 14 CFR 26.

Description of Relief Sought: The petitioner seeks relief from part 26 for Embraer Model EMB–135J airplanes. These airplanes' maximum payload capacities and passenger capacities are below those specified for transport category airplanes. However, since this model is on the same type certification data sheet (TCDS) as the original Embraer Model EMB–135/EMB–145 airplanes, it is subject to the part 26 rule.

[FR Doc. 2010–4788 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Dakota, Missouri Valley & Western Railroad

[Waiver Petition Docket Number FRA–2009–0091]

The Dakota, Missouri Valley & Western Railroad (DMVW) hereby petitions FRA for a waiver from replacing rails with rail end vertical split head type defects 4″ or less in size. These defects are rail ends only and are confined within the area of the joint bars. These rails are located on Class I track and the train speed is 10 mph. The line does not have passenger service. DMVW will inspect these defects with their normal inspections but will not note each one separately.

Besides the elevators, DMVW serves the Coal Creek Power Station who provides power for eastern North Dakota, and much of Minnesota. DMVW also serves the Blue Flint Ethanol Plant which provides alternative fuel sources.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2009–0091) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on March 3, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–4868 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Privacy Act of 1974; System of Records Notice

AGENCY: Federal Motor Carrier Safety Administration (FMCSA) Department of Transportation (DOT).

ACTION: Notice to establish a new system of records.

SUMMARY: FMCSA proposes to establish a system of records under the Privacy Act of 1974 (5 U.S.C. 552a) for its Pre-Employment Screening Program (PSP), as required by 49 U.S.C. 31150. The system of records will make crash and inspection data about commercial motor vehicle (CMV) drivers rapidly available to CMV drivers (operator-applicants) and prospective employers of those drivers (motor carriers), via a secure Internet site, as an alternative to requiring them to submit a Freedom of Information Act (FOIA) request or Privacy Act request to FMCSA for the data.

Operator-applicants and motor carriers must pay a fee to access data in PSP, but use of PSP is optional. Motor carriers may continue to request the information from FMCSA under FOIA, and operator-applicants may continue to receive their own safety performance data free of charge by submitting a Privacy Act request to FMCSA.

The PSP system will be administered by a FMCSA contractor, National Information Consortium Technologies, LLC (NIC). The PSP contractor will not be authorized to provide data to any persons other than motor carriers, for pre-employment screening purposes, and operator-applicants, as required in section 31150 (b)(3). A data request from any other person (e.g., a law firm) will be treated as a FOIA request by FMCSA. FMCSA will perform audits of the PSP contractor to ensure performance, privacy and security objectives are being met. The PSP system will only allow operator-applicants to access their own data, and will only allow motor carriers to access an individual operator-applicant's data if the motor carrier certifies the data is for pre-employment screening and that it has obtained the operator-applicant's written consent. The system of records is more thoroughly detailed below and in the Privacy Impact Assessment (PIA) that can be found on the DOT Privacy Web site at *http://www.dot.gov/privacy*.

DATES: Effective April 7, 2010. Written comments should be submitted on or before the effective date. FMCSA may publish an amended SORN in light of any comments received.

ADDRESSES: Send comments to Pam Gosier-Cox, FMCSA Privacy Officer, FMCSA Office of Information Technology, MC–RI, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *pam.gosier.cox@dot.gov*.

FOR FURTHER INFORMATION CONTACT: For privacy issues please contact: Pam Gosier-Cox, FMCSA Privacy Officer, FMCSA Office of Information Technology, MC–RI, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *pam.gosier.cox@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. The PSP Program

Section 31150 of title 49, U.S. Code (USC), titled "Safety performance history screening" as added by section 4117(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119 Stat. 1144, 1728–1729, August 10, 2005, requires FMCSA to provide persons conducting pre-employment screening services for the motor carrier industry electronic with access to the following reports contained in FMCSA's Motor Carrier Management Information System (MCMIS):

(1) Commercial motor vehicle accident reports.

(2) Inspection reports that contain no driver-related safety violations.

(3) Serious driver-related safety violation inspection reports.

FMCSA designed PSP to satisfy the requirements of 49 U.S.C. 31150 and to meet the following performance, privacy and security objectives:

- Provide driver-related MCMIS crash and inspection data electronically, via a secure Internet site, for a fee, and in a timely and professional manner;
- Allow operator-applicants to access their own data upon written or electronic request, and allow motor carriers to access an operator-applicant's data, for pre-employment screening purposes, with the operator-applicant's written or electronic consent;
- Maintain, handle, store, and distribute the data in PSP in accordance with 49 U.S.C. 31150 and applicable laws, regulations and policies; and
- Provide a redress procedure by which an operator-applicant can seek to correct inaccurate information in PSP, via the DataQs system currently maintained by FMCSA.

II. The Privacy Act

The Privacy Act (5 USC 552a) governs the means by which the United States Government collects, maintains, and uses personally identifiable information (PII) in a system of records. A "system of records" is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier.

The Privacy Act requires each agency to publish in the **Federal Register** a system of records notice (SORN) identifying and describing each system of records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.*, to determine if the system contains information about them).

IV. Privacy Impact Assessment

FMCSA is publishing a Privacy Impact Assessment (PIA) to coincide with the publication of this SORN. In accordance with 5 USC 552a(r), a report on the establishment of this system of records has been sent to Congress and to the Office of Management and Budget.

System Number:

DOT/FMCSA 007

SYSTEM NAME:

Pre-Employment Screening Program (PSP).

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

- NIC Primary Data Center
  AT&T Data Center, Ashburn, VA 20147.
- NIC Secondary Data Center
  AT&T Data Center, Allen, TX 75013.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

PSP will include personally identifiable information (PII) pertaining to CMV, as defined by 49 CFR 390.5, drivers (referred to herein as operator-applicants).

CATEGORIES OF RECORDS IN PSP:

PSP will contain the following categories of records, in separate databases:

1. *CMV crash and inspection records.* Each month, FMCSA will provide the PSP contractor with a current MCMIS data extract containing the most recent five (5) years' crash data and the most recent three (3) years' inspection information. The MCMIS data extract in PSP will include the following PII data elements, all of which will be encrypted:
   - CMV driver name (last, first, middle initial)
   - CMV driver date of birth
   - CMV driver license number
   - CMV driver license state
2. *Financial transaction records.* The PSP system will contain records of payments processed by the contractor, NIC, to collect fees charged to motor carriers and operator-applicants for accessing crash and inspection data in PSP. The financial transaction records will include the following PII data elements, which will be encrypted (and, in some cases, truncated):
   - Credit card holder name
   - Credit card account number
   - Account holder address

   Card Verification Value Code (CVV) numbers will be temporarily captured by the system but will not be retained or stored in PSP.
3. *Access transaction records.* The PSP system will contain records of all access transactions processed over the PSP Web site. Access transaction records will include the following PII data elements, which will be encrypted:

- CMV driver name (last, first, middle initial)
- CMV driver date of birth
- CMV driver license number
- CMV driver license State
- CMV driver address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 31150, as added by section 4117 of Public Law 109–59 [Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)].

PURPOSE(S):

Authorized DOT/FMSCA staff and contractor personnel will use the following PII in PSP for the following purposes:

- To provide system support and maintenance for PSP.
- To make CMV crash and inspection records available to operator-applicants and motor carriers upon receipt of validated access requests and fee payments.
- To process credit card payments and collect fees for the requested access transactions.
- To create a historical record of PSP usage for accounting and compliance audit purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF USE:

The PSP system will share PII outside DOT as follows:

- Authorized motor carriers may access an individual's operator-applicant's crash and inspection data in PSP with the operator-applicant's written consent and payment of a fee.
- Validated operator-applicants may access their own crash and inspection data in PSP upon written request and payment of a fee.
- When an operator-applicant makes a request for his or her own data from PSP, the FMCSA contractor will request that the operator-applicant provide his or her full name, date of birth, driver license number, driver license state and current address to verify the identity of the operator-applicant and this information will be transmitted to the Validation Authority of the FMCSA contractor (e.g. Lexis-Nexis) to verify and validate the individual operator-applicant requesting access to his or her own inspection and crash data.
- Other possible routine uses of the information, applicable to all DOT Privacy Act systems of records, are published in the **Federal Register** at 65 FR 19476 (April 11, 2000), under "Prefatory Statement of General Routine Uses" (available at *http://www.dot.gov/privacy/privacyactnoties/*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records will be stored in secure database servers, and data will be backed up on a Storage Area Network (SAN) in encrypted/truncated form. Any paper records received or required for purposes of processing data requests will be stored in secure file folders at NIC's Primary Data Center.

RETRIEVABILITY:

CMV crash and inspection records in the PSP database will be retrieved by using the operator-applicant's last name, license number, and license state. Additional operator-applicant information (e.g., date of birth, first name, and middle initial) will be used to confirm the accuracy of the search.

ACCESSIBILITY (INCLUDING SAFEGUARDS):

All records in PSP will be protected from unauthorized access through appropriate administrative, physical and technical safeguards. Electronic files will be stored in a database secured by password security, encryption, firewalls, and secured operating systems, to which only authorized NIC or DOT/FMCSA personnel will have access, on a need-to-know basis. Paper files will be stored in file cabinets in a locked file room to which only authorized NIC and DOT/FMCSA personnel will have access, on a need-to-know basis. All access to the electronic system and paper files will be logged and monitored. NIC will be subject to routine audits of the PSP program by FMCSA to ensure compliance with the Privacy Act, applicable sections of the Fair Credit Reporting Act and other applicable Federal laws, regulations, or other requirements.

Access by external users (operator-applicants and motor carriers) will be restricted within the system based upon the user's role as an authorized motor carrier or validated operator-applicant. An authorized motor carrier and validated operator-applicant is an entity or person who has been provided a unique user identification and password by NIC and must use the unique identification and password to access data in PSP. External users will be able to query the CMV crash and inspection database only (the financial transaction database and access request database cannot be externally queried). NIC will provide users with an advisory statement that authorized motor carriers could be subject to criminal penalties and other sanctions under 18 U.S.C. 1001 for misuse of the PSP system.

In order for a motor carrier to receive an individual operator-applicant's crash and inspection data, the motor carrier must certify, for each request, under penalty of perjury, that the request is for pre-employment purposes only and that written consent of the operator-applicant has been obtained. Upon completion of certification, the NIC will send a notification to the motor carrier that the individual operator-applicant data is available on secure Web site. The motor carrier will access this individual's information by entering a unique identification and password. Motor carriers will be required to maintain each operator-applicant's signed, written consent form for five (5) years. Motor carriers are subject to random audits from NIC and/or FMCSA to ensure that written consent of operator-applicants was obtained.

The PSP system also allows validated operator-applicants to access their own crash and inspection data upon written or electronic request. Upon receipt of an operator-applicant's request, NIC will validate the identity of the requestor (operator-applicant) by using his or her full name, date of birth, driver license number, driver license state and current address against a validation authority.

All PII data elements will be encrypted in the PSP system, as more fully described under the heading "Categories of Records in PSP."

RETENTION AND DISPOSAL:

1. *CMV crash and inspection records:* Pursuant to General Records Schedule (GRS) 20 ("Electronic Records," February 2008, see *http://www.archives.gov/records-mgmt/ardor/grs20.html*), governing extract files, each monthly MCMIS extract in PSP is deleted approximately three (3) months after being superseded by a current MCMIS extract, unless needed longer for administrative, legal, audit or other operational purposes.

2. *Financial transaction records:* Credit card information is encrypted/truncated and retained for 30 days.

3 *Access transaction records:* PSP transaction records are retained for a period of five years.

SYSTEM MANAGER CONTACT INFORMATION:

PSP System Manager: Arlene D. Thompson; Office of Information Technology; Federal Motor Carrier Safety Administration; U.S. Department of Transportation; 1200 New Jersey Avenue, SE., W65–319; Washington, DC 20590.

MCMIS System Manager: Heshmat Ansari, PhD; Division Chief, IT Development Division; Office of Information Technology; Federal Motor Carrier Safety Administration; U.S. Department of Transportation; 1200 New Jersey Avenue, SE., W68–330; Washington, DC 20590.

Freedom of Information Act (FOIA) Office: Federal Motor Carrier Safety Administration Attn: FOIA Team MC–MMI; DIR Officer, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Notification Procedure: Individual operator-applicants wishing to know if their inspection and crash records appear in this system may directly access the PSP system or make a request in writing to the PSP System Manager identified under "System Manager Contact Information." Individual operator-applicants wishing to know if their transaction records and credit card information appear in this system may make a written request to the following address:

NIC Technologies, Inc., 1477 Chain Bridge Road, Suite 101, McLean, VA 22101.

RECORD ACCESS PROCEDURES:

Individual operator-applicants seeking access to information about them in this system may directly access the PSP system or apply to the PSP System Manager or the FMCSA FOIA Office identified under "System Manager Contact Information."

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of information about them in this system should apply to the System Manager for either PSP or MCMIS by following the same procedures as indicated under "Notification Procedure." Individuals may also submit a data challenge to DataQs by logging into the DataQs Web site (*https://dataqs.fmcsa.dot.gov/login.asp*).

RECORD SOURCE CATEGORIES:

1. *CMV crash and inspection records:* All commercial driver crash and inspection data in PSP is received from a monthly MCMIS data extract. The MCMIS SORN identifies the source(s) of the information in MCMIS.

2. *Financial transaction records:* Credit card information pertaining to an individual card holder (i.e., operator-applicant) is obtained directly from the card holder, who is responsible for entering it accurately on the PSP Web site.

3. *Access transaction records:* An audit trail of those entities or persons that accessed the PSP (i.e. authorized motor carriers or validated operator-applicants) is automatically created when requests are initiated and when data is released by NIC.

These records are internal documents to be used by NIC and FMCSA for auditing, monitoring and compliance purposes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: March 2, 2010.

Habib Azarsina,

Departmental Privacy Officer, 202–366–1965.

[FR Doc. 2010–4811 Filed 3–5–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

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 31 individuals and 47 entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 31 individuals and 47 entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on March 2, 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 on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On March 2, 2010, the Director of OFAC designated 31 individuals and 47 entities whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

1. AGROGANADERA LA FORTALEZA, Finca La Fortaleza, Monterrey, Meta, Colombia; Transversal 25 No. 41A–05, Villavicencio, Colombia; Matricula Mercantil No 158119 (Colombia) [SDNTK].

2. AGROVET EL REMANSO, Carrera 35A No. 17B–05 Sur, Bogota, Colombia; Carrera 86 Sur No. 24A–19 Bdg. 79 L–3, Bogota, Colombia; Matricula Mercantil No 1095044 (Colombia) [SDNTK].

3. AGUILAR AGUILAR Y CIA. LTDA., Carrera 70H No. 127A–26, Bogota, Colombia; NIT # 900039614–6 (Colombia) [SDNTK].

4. AGUILAR ALVAREZ Y CIA. LTDA., Carrera 35 No. 34B–37 of. 20T, Villavicencio, Colombia; NIT # 830122743–9 (Colombia) [SDNTK].

5. AGUILAR DUARTE, Jose Lenoir, c/o AGUILAR AGUILAR Y CIA. LTDA., Bogota, Colombia; c/o AGUILAR ALVAREZ Y CIA. LTDA., Villavicencio, Colombia; c/o CARILLANCA

COLOMBIA Y CIA S EN CS, Bogota, Colombia; c/o CARILLANCA S.A., San Jose, Costa Rica; c/o INVERSIONES ADAG LTDA., Bogota, Colombia; c/o INVERSIONES LOS TUNJOS LTDA., Bogota, Colombia; c/o RECIFIBRAS SECUNDARIAS LTDA., Bogota, Colombia; Cedula No. 79265614 (Colombia); Residency Number 117000439417 (Costa Rica) (individual) [SDNTK].

6. ARANGO MADRIGAL, Hernan Dario, c/o CULTIVAR S.A., Fuente de Oro, Meta, Colombia; c/o INVARA S.C.S., Bogota, Colombia; c/o PANOS Y SEDAS LTDA., Bogota, Colombia; Carrera 31 No. 74A–16, Bogota, Colombia; DOB 20 Mar 1952; POB Yarumal, Antioquia, Colombia; Cedula No. 19186993 (Colombia) (individual) [SDNTK].

7. ARISTIZABAL GIRALDO, Tulio Adan, c/o DISTRIBUIDORA BABY PANALES, Cali, Colombia; Calle 14 No. 9–53, Cali, Colombia; DOB 06 Mar 1966; alt. DOB 03 Jun 1966; Cedula No. 79395721 (Colombia) (individual) [SDNTK].

8. AYALA BARRERA, Rubi Yiceth, c/o HERJEZ LTDA., Bogota, Colombia; c/o MATAMBRE DE LO MEJOR, Bogota, Colombia; DOB 13 Feb 1982; Cedula No. 52784570 (Colombia) (individual) [SDNTK].

9. BARRERA BARRERA, Daniel (a.k.a. "EL LOCO BARRERA"), Colombia; DOB 06 Nov 1968; alt. DOB 15 Sep 1967; Cedula No. 18221599 (Colombia) (individual) [SDNTK].

10. BERNAL BERNAL, Liliana, c/o COLPRETINAS LTDA., Bogota, Colombia; c/o CRIADERO EL TAMBO LTDA., Bogota, Colombia; c/o CULTIVAR S.A., Fuente de Oro, Meta, Colombia; c/o DISCO S.A., Cota, Cundinamarca, Colombia; c/o JESBEL Y CIA. S. EN C., Cota, Cundinamarca, Colombia; DOB 23 Feb 1973; Cedula No. 52056898 (Colombia) (individual) [SDNTK].

11. BERNAL BERNAL, Luis Fernando, c/o COLPRETINAS LTDA., Bogota, Colombia; c/o CULTIVAR S.A., Fuente de Oro, Meta, Colombia; c/o DISCO S.A., Cota, Cundinamarca, Colombia; c/o JESBEL Y CIA. S. EN C., Cota, Cundinamarca, Colombia; c/o TEXTILES MODA NOVA LTDA., Bogota, Colombia; DOB 21 Jan 1971; Cedula No. 79187117 (Colombia) (individual) [SDNTK].

12. BERNAL DE BERNAL, Beatriz Eugenia (a.k.a. BERNAL BOTERO, Beatriz Eugenia), c/o CULTIVAR S.A., Fuente de Oro, Meta, Colombia; c/o DISCO S.A., Cota, Cundinamarca, Colombia; c/o JESBEL Y CIA. S. EN C., Cota, Cundinamarca, Colombia; c/o TEXTILES MODA NOVA LTDA., Bogota, Colombia; DOB 24 Sep 1948; POB La Ceja, Antioquia, Colombia; Cedula No. 41420126 (Colombia) (individual) [SDNTK].

13. BERNAL LONDONO, Jesus Antonio, c/o CRIADERO EL TAMBO LTDA., Bogota, Colombia; c/o CULTIVAR S.A., Fuente de Oro, Meta, Colombia; c/o DISCO S.A., Cota, Cundinamarca, Colombia; c/o JESBEL Y CIA. S. EN C., Cota, Cundinamarca, Colombia; Calle 56 No. 38–23 Apto. 501, Bogota, Colombia; DOB 10 Apr 1943; POB La Ceja, Antioquia, Colombia; Cedula No. 2911166 (Colombia) (individual) [SDNTK].

14. BINGO INTERNACIONAL E.U., Avenida 19 No. 9–40, Bogota, Colombia; NIT # 900103490–3 (Colombia) [SDNTK].

15. BLUE-STAR SECCION HOSTELERIA S.L., Calle Villaverde, 2, Parla, Madrid 28981, Spain; C.I.F. B84214477 (Spain) [SDNTK].

16. BUSTOS SUAREZ, Danilo, c/o COMERCIALIZADORA E INVERSIONES BUSTOS ARIZA Y CIA. S.C.S., Bogota, Colombia; c/o MODERNA EXPRESS TRANSPORTE DE CARGA LTDA., Bogota, Colombia; Avenida 26 Sur No. 72–95 Apto. 401 y 402, Bogota, Colombia; Calle 126 No. 11–63, Bogota, Colombia; Carrera 22 No. 122–31 Apto. 304, Bogota, Colombia; DOB 11 Sep 1963; Cedula No. 79283879 (Colombia) (individual) [SDNTK].

17. CARDENAS DUARTE Y CIA. LTDA., Calle 114A No. 51–36, Bogota, Colombia; NIT # 900110094–9 (Colombia) [SDNTK].

18. CARDENAS DUARTE, Norma Constanza, c/o CARDENAS DUARTE Y CIA. LTDA., Bogota, Colombia; c/o LOGISTICA Y TRANSPORTE NORVAL LTDA., Bogota, Colombia; Calle 135 No. 17–25 apto. 503, Bogota, Colombia; DOB 03 Apr 1973; POB Bogota, Colombia; Cedula No. 52106018 (Colombia) (individual) [SDNTK].

19. CIA. COMERCIALIZADORA DE MOTOCICLETAS Y REPUESTOS S.A. (a.k.a. WISMOTOS S.A.), Calle 14 No. 13–29, Granada, Meta, Colombia; Calle 35 No. 27–63, Villavicencio, Colombia; Carrera 6 No. 7–17, San Martin, Meta, Colombia; NIT # 900069501–0 (Colombia) [SDNTK].

20. COLPRETINAS LTDA. (a.k.a. CP TEXTILES), Carrera 13 No. 17–55, Bogota, Colombia; NIT # 830034149–6 (Colombia) [SDNTK].

21. COMERCIALIZADORA DE CARNES CONTINENTAL MGCI LTDA. (a.k.a. CARNES EL PROVEEDOR C F P; a.k.a. CARNES LA MUNDIAL M.A), Aut. Sur No. 66–78 of. 74, Bogota, Colombia; NIT # 830108927–9 (Colombia) [SDNTK].

22. COMERCIALIZADORA E INVERSIONES BUSTOS ARIZA Y CIA. S.C.S. (a.k.a. TRANSCIBA), Avenida Ciudad de Cali No. 10A–42, Bogota, Colombia; Calle 20 No. 82–52 of. 454, Bogota, Colombia; Transversal 49B No. 3A–25 of. 101–303, Bogota, Colombia; NIT # 830084978–9 (Colombia) [SDNTK].

23. CRIADERO EL TAMBO LTDA., Carrera 13 No. 17–55, Bogota, Colombia; NIT # 900016185–9 (Colombia) [SDNTK].

24. CULTIVAR S.A., Carrera 14 No. 9–04, Fuente de Oro, Meta, Colombia; NIT # 822007334–9 (Colombia) [SDNTK].

25. DEWBELLE CENTRO DE ESTETICA Y BELLEZA LTDA., Calle 8B No. 78–22, Bogota, Colombia; NIT # 900049690–9 (Colombia) [SDNTK].

26. DISCO S.A., Km. 3.5 Autop. Medellin Via Siberia Costado Sur Terminal Terrestre de Carga Bloque 4 Bod. 32, Cota, Cundinamarca, Colombia; NIT # 860517890–9 (Colombia) [SDNTK].

27. DISTRIBUIDORA BABY PANALES, Calle 14 No. 9–45, Cali, Colombia; Calle 14 No. 9–53, Cali, Colombia; Matricula Mercantil No. 569739–2 (Colombia) [SDNTK].

28. DOLL EXPORT LTDA., Carrera 69C No. 9D–85 Int. 3 apto. 308, Bogota, Colombia; Sartrouville 78500, France; NIT # 800212502–8 (Colombia) [SDNTK].

29. ECHEVERRY CADAVID, Nebio De Jesus (a.k.a. ECHEVERRI, Nevio; a.k.a. ECHEVERRY, Nevio), c/o HACIENDA VENDAVAL, Paratebueno, Cundinamarca, Colombia; c/o PROVEEDORES Y DISTRIBUIDORES NACIONALES S.A., Bogota, Colombia; Carrera 10 No. 46–43, Pereira, Colombia; Carrera 38 No. 26B–11, Villavicencio, Colombia; La Pastora, Vereda La Union, Dosquebradas, Risaralda, Colombia; DOB 28 Nov 1944; Cedula No. 10056431 (Colombia) (individual) [SDNTK].

30. EJERCITO REVOLUCIONARIO POPULAR ANTITERRORISTA DE COLOMBIA (a.k.a. ERPAC; a.k.a. PEOPLE'S REVOLUTIONARY ANTI–TERRORIST ARMY OF COLOMBIA), Colombia [SDNTK].

31. EMPRESA DE EMPLEOS TEMPORALES LA UNICA LTDA., Calle 38 No. 30A–31 of. 902, Villavicencio, Colombia; NIT # 822000687–1 (Colombia) [SDNTK].

32. ESTACION DE SERVICIO LA FLORESTA DE FUENTE DE ORO, Casco Urbano Salida Puerto Lleras, Fuente de Oro, Meta, Colombia; Matricula Mercantil No. 00017159 (Colombia) [SDNTK].

33. ESTACION DE SERVICIO LA TURQUESA, Calle 6 No. 1–02, Puerto Lleras, Meta, Colombia; Matricula

Mercantil No. 00091367 (Colombia) [SDNTK].

34. ESTACION DE SERVICIO SERVIAGRICOLA DEL ARIARI, Cruce Puerto Rico, Puerto Lleras, Meta, Colombia; Matricula Mercantil No. 00029517 (Colombia) [SDNTK].

35. GALVIS MARIN, Samuel Gustavo (a.k.a. GALVEZ, Samuel), c/o PALMERAS SANTA BARBARA, Calamar, Guaviare, Colombia; Calle 39 No. 19A–33, Villavicencio, Colombia; Cedula No. 6001464 (Colombia) (individual) [SDNTK].

36. GESTION ALFA LTDA., Calle 62 No. 9A–82 of. 810, Bogota, Colombia; NIT # 830095836–9 (Colombia) [SDNTK].

37. GUERRERO CASTILLO, Pedro Oliveiro (a.k.a. "CUCHILLO"), Colombia; DOB 28 Feb 1970; POB San Martin, Meta, Colombia; Cedula No. 17355451 (Colombia) (individual) [SDNTK].

38. GUTIERREZ GARAVITO, Armando, c/o BLUE–STAR SECCION HOSTELERIA S.L., Parla, Madrid, Spain; c/o EMPRESA DE EMPLEOS TEMPORALES LA UNICA LTDA., Villavicencio, Colombia; c/o INVERSIONES GANADERAS Y PALMERAS S.A., Bogota, Colombia; c/o INVERSIONES GANAGRO LTDA., Villavicencio, Colombia; c/o INVERSIONES TALADRO LTDA., Villavicencio, Colombia; Calle 8B No. 77–30, Bogota, Colombia; Calle 8B No. 78–30 Castilla Real, Bogota, Colombia; Calle 23F No. 73F–03, Bogota, Colombia; Calle Hacienda de Pavones, No. 48, Madrid, Spain; Hacienda Oeste, Restrepo, Meta, Colombia; DOB 02 Dec 1959; POB Acacias, Meta, Colombia; Cedula No. 17410782 (Colombia); N.I.E. X–1552120–B (Spain) (individual) [SDNTK].

39. GUTIERREZ HERNANDEZ, Javier Mauricio, c/o BINGO INTERNACIONAL E.U., Bogota, Colombia; c/o INVERSIONES GANADERAS Y PALMERAS S.A., Bogota, Colombia; Calle 18 No. 6–31 of. 704, Bogota, Colombia; Carrera 7 Bis No. 123–51 apto. 201, Barrio Santa Barbara, Bogota, Colombia; DOB 11 Dec 1968; POB Villavicencio, Colombia; Cedula No. 17339511 (Colombia) (individual) [SDNTK].

40. GUTIERREZ MOLINA, Diego Armando, c/o INVERSIONES GANADERAS Y PALMERAS S.A., Bogota, Colombia; c/o INVERSIONES GANAGRO LTDA., Villavicencio, Colombia; c/o INVERSIONES TALADRO LTDA., Villavicencio, Colombia; DOB 20 Jun 1987; POB Bogota, Colombia; Cedula No. 1032390133 (Colombia) (individual) [SDNTK].

41. GUTIERREZ, Dolis, c/o DOLL EXPORT LTDA., Bogota, Colombia; DOB 03 Oct 1962; POB San Martin, Meta, Colombia; Cedula No. 51658906 (Colombia) (individual) [SDNTK].

42. HACIENDA VENDAVAL, Vereda Paloma Km. 2, Paratebueno, Cundinamarca, Colombia; Matricula Mercantil No. 1473503 (Colombia) [SDNTK].

43. HERJEZ LTDA. (a.k.a. CARNES CUERNAVACA), Avenida Ciudad de Cali No. 15A–91 Local-06, Bogota, Colombia; NIT # 900083653–1 (Colombia) [SDNTK].

44. INVARA S.C.S., Carrera 9A No. 12–61 p. 4, Bogota, Colombia; NIT # 800162357–0 (Colombia) [SDNTK].

45. INVERSIONES ADAG LTDA., Carrera 16 No. 96–64 of. 316, Bogota, Colombia; NIT # 830007842–8 (Colombia) [SDNTK].

46. INVERSIONES AGROINDUSTRIALES DEL ORIENTE LTDA. (a.k.a. INAGRO LTDA.), Carrera 14 No. 13–56, Granada, Meta, Colombia; NIT # 822000899–6 (Colombia) [SDNTK].

47. INVERSIONES GANADERAS Y PALMERAS S.A. (a.k.a. GANAPALMAS S.A.), Calle 18 No. 6–31 of. 704, Bogota, Colombia; NIT # 900016274–6 (Colombia) [SDNTK].

48. INVERSIONES GANAGRO LTDA., Edif. Parque Santander of. 906, Villavicencio, Colombia; NIT # 900078332–0 (Colombia) [SDNTK].

49. INVERSIONES LAS ACACIAS Y CIA. LTDA., Carrera 17 No. 14–41, Acacias, Meta, Colombia; NIT # 822001081–3 (Colombia) [SDNTK].

50. INVERSIONES LOS TUNJOS LTDA., Calle 62 No. 9A–82 of. 616, Bogota, Colombia; NIT # 830147501–1 (Colombia) [SDNTK].

51. INVERSIONES TALADRO LTDA. (a.k.a. KUARZO DISCOTECA), Calle 1 K. 48 Anillo Vial, Villavicencio, Colombia; NIT # 900063810–4 (Colombia) [SDNTK].

52. JAIME JEREZ V. Y CIA. S.C.S. JERGAL S.C.S., Calle 25C No. 85C–52, Bogota, Colombia; NIT # 860525034–4 (Colombia) [SDNTK].

53. JEREZ GALEANO, Jaime, c/o INVERSIONES LOS TUNJOS LTDA., Bogota, Colombia; c/o JAIME JEREZ V. Y CIA. S.C.S. JERGAL S.C.S., Bogota, Colombia; Carrera 7 No. 145–38 Manzana 2 Int. 2 apto. 101, Bogota, Colombia; Calle 125 No. 21A–71 of. 302, Bogota, Colombia; Calle 125 No. 21A–71 of. 402, Bogota, Colombia; DOB 08 Apr 1969; POB Bogota, Colombia; Cedula No. 79484852 (Colombia) (individual) [SDNTK].

54. JEREZ PINEDA, Oscar Alberto, c/o HERJEZ LTDA., Bogota, Colombia; DOB 07 Aug 1968; POB Bogota, Colombia; Cedula No. 79133740 (Colombia) (individual) [SDNTK].

55. JESBEL Y CIA. S. EN C., Km. 3.5 Autop. Medellín Via Siberia Costado Sur Terminal Terrestre de Carga Bloque 4 Bod. 32, Cota, Cundinamarca, Colombia; NIT # 860522569–9 (Colombia) [SDNTK].

56. LA TASAJERA DE FUENTE DE ORO, Km. 1 Fuente de Oro Via Granada, Fuente de Oro, Meta, Colombia; Matricula Mercantil No 00118073 (Colombia) [SDNTK].

57. LOGISTICA Y TRANSPORTE NORVAL LTDA., Avenida Boyaca No. 68–24, Bogota, Colombia; NIT # 900224846–0 (Colombia) [SDNTK].

58. LONDONO ZAPATA, Jesus Antonio, Calle 47 Bis No. 28–55, Villavicencio, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL ORIENTE LTDA., Granada, Meta, Colombia; Calle 14 No. 13–86/90, Fuentedeoro, Meta, Colombia; Carrera 14 No. 14–04/06, Fuentedeoro, Meta, Colombia; Finca Juanchito, Vereda Iraca, San Martin, Meta, Colombia; Finca La Rivera I, Vereda La Luna, Fuentedeoro, Meta, Colombia; Finca La Rivera II, Vereda Pto. Poveda, Fuentedeoro, Meta, Colombia; Finca Verdum, Vereda Iraca, San Martin, Meta, Colombia; Finca Verdum Ligia, Vereda Iraca, Fuentedeoro, Meta, Colombia; Finca Villa Maria, Vereda Pto. Poveda, Fuentedeoro, Meta, Colombia; DOB 24 Aug 1954; POB Tulua, Valle, Colombia; Cedula No. 6633775 (Colombia) (individual) [SDNTK].

59. LOPEZ CADAVID, Oscar De Jesus, c/o PROVEEDORES Y DISTRIBUIDORES NACIONALES S.A., Bogota, Colombia; Hacienda San Lorenzo, Paratebueno, Cundinamarca, Colombia; DOB 21 Jun 1956; Cedula No. 15502188 (Colombia) (individual) [SDNTK].

60. LOZADA PABON, Julio Cesar, c/o AGROGANADERA LA FORTALEZA, Monterrey, Meta, Colombia; Carrera 51 No. 122–09 Apto. 102, Bogota, Colombia; Cedula No. 17323068 (Colombia) (individual) [SDNTK].

61. MARTINEZ ARANGO, Oscar Richard, c/o COMERCIALIZADORA DE CARNES CONTINENTAL MGCI LTDA., Bogota, Colombia; DOB 31 Jul 1972; Cedula No. 79634329 (Colombia) (individual) [SDNTK].

62. MATAMBRE DE LO MEJOR, Carrera 75 No. 24C–25, Bogota, Colombia; Matricula Mercantil No 1664511 (Colombia) [SDNTK].

63. MINIMERCADO EL MANANTIAL DEL NEUTA, Calle 4A No. 2–01 Mz. 39 Ca. 32, Soacha, Cundinamarca, Colombia; Matricula Mercantil No 1776209 (Colombia) [SDNTK].

64. MODERNA EXPRESS TRANSPORTE DE CARGA LTDA., Transversal 96A No. 14–70, Bogota, Colombia; NIT.# 830039006–4 (Colombia) [SDNTK].

65. MOLINA CUBILLOS, Alba Judith, c/o DEWBELLE CENTRO DE ESTETICA Y BELLEZA LTDA., Bogota, Colombia; c/o INVERSIONES GANADERAS Y PALMERAS S.A., Bogota, Colombia; c/o VITAL SILUET CENTRO DE ESTETICA, Bogota, Colombia; Calle 42 No. 72–A35 Casa 16, Bogota, Colombia; Calle 43A No. 69D–51 Trr. 5 Apto. 817, Bogota, Colombia; DOB 01 Mar 1963; POB Guamal, Meta, Colombia; Cedula No. 40315181 (Colombia) (individual) [SDNTK].

66. OICATA MORALES, Gelber Mauricio, c/o AGROVET EL REMANSO, Bogota, Colombia; DOB 29 Sep 1963; Cedula No. 74322694 (Colombia) (individual) [SDNTK].

67. OSPINA MURILLO, Wilmer, c/o CIA. COMERCIALIZADORA DE MOTOCICLETAS Y REPUESTOS S.A., Granada, Meta, Colombia; c/o ESTACION DE SERVICIO LA FLORESTA DE FUENTE DE ORO, Fuente de Oro, Meta, Colombia; c/o ESTACION DE SERVICIO LA TURQUESA, Puerto Lleras, Meta, Colombia; c/o ESTACION DE SERVICIO SERVIAGRICOLA DEL ARIARI, Puerto Lleras, Meta, Colombia; c/o LA TASAJERA DE FUENTE DE ORO, Fuente de Oro, Meta, Colombia; c/o WISMOTOS FUENTE DE ORO, Fuente de Oro, Meta, Colombia; DOB 26 May 1970; Cedula No. 17344677 (Colombia) (individual) [SDNTK].

68. PALMERAS SANTA BARBARA, Entrada Casco Urbano Calamar, Calamar, Guaviare, Colombia; Matricula Mercantil No 109214 (Colombia) [SDNTK].

69. PANOS Y SEDAS LTDA. (a.k.a. TELARAMA A Y S), Carrera 9 No. 12–61, Bogota, Colombia; NIT # 830070893–0 (Colombia) [SDNTK].

70. PROVEEDORES Y DISTRIBUIDORES NACIONALES S.A. (a.k.a. NACIONAL DISTRIBUCIONES; a.k.a. PRODISNAL S.A.; a.k.a. PROVEEDOR HOGAR; a.k.a. SUPERMERCADOS EL PROVEEDOR), Calle 15 No. 18–50, Yopal, Casanare, Colombia; Calle del Comercio, Puerto Inirida, Guainia, Colombia; Carrera 5 No. 16–45, Puerto Inirida, Guainia, Colombia; Carrera 14 No. 29–97, Granada, Meta, Colombia; Carrera 22 No. 6–21, San Jose del Guaviare, Guaviare, Colombia; Carrera 22 No. 7–55, San Jose del Guaviare, Guaviare, Colombia; Carrera 29 No. 20–38, Yopal, Casanare, Colombia; Carrera 38 No. 26C–95, Villavicencio, Colombia; Corabastos Bod. 3 Loc. 12, Bogota, Colombia; NIT # 830511666–9 (Colombia) [SDNTK].

71. RECIFIBRAS SECUNDARIAS LTDA., Calle 14 No. 32–24, Bogota, Colombia; NIT # 830092250–1 (Colombia) [SDNTK].

72. SALAMANCA BUITRAGO, Mesias, c/o GESTION ALFA LTDA., Bogota, Colombia; Calle 62 No. 9A–82 of. 616, Bogota, Colombia; DOB 05 Jan 1951; alt. DOB 01 May 1951; Cedula No. 19133648 (Colombia) (individual) [SDNTK].

73. SANCHEZ SILVA, Elkin Alexis, Calle 119A No. 48–83 apto. 405, Bogota, Colombia; DOB 04 Jan 1965; Cedula No. 79368275 (Colombia) (individual) [SDNTK].

74. TEXTILES MODA NOVA LTDA., Carrera 13 No. 17–55 piso 2, Bogota, Colombia; NIT # 830072066–5 (Colombia) [SDNTK].

75. ULLOA ESPITIA, Hubel, c/o MINIMERCADO EL MANANTIAL DEL NEUTA, Soacha, Cundinamarca, Colombia; Carrera 3B E No. 91–28 Sur, Bogota, Colombia; DOB 22 Jun 1965; Cedula No. 5712762 (Colombia) (individual) [SDNTK].

76. VELEZ MURILLO, Uberney, c/o CULTIVAR S.A., Fuente de Oro, Meta, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL ORIENTE LTDA., Granada, Meta, Colombia; Carrera 39B No. 24–21 Casa 9, Villavicencio, Colombia; DOB 05 Sep 1962; POB Fuentedeoro, Meta, Colombia; Cedula No. 86030095 (Colombia) (individual) [SDNTK].

77. VITAL SILUET CENTRO DE ESTETICA, Calle 8B No. 78–22, Bogota, Colombia; Matricula Mercantil No 1419756 (Colombia) [SDNTK].

78. WISMOTOS FUENTE DE ORO, Carrera 14 No. 9–19, Fuente de Oro, Meta, Colombia; Matricula Mercantil No 00118075 (Colombia) [SDNTK].

Dated: March 2, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–4782 Filed 3–5–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Application for Conversion From: (a) OTS–Regulated, State-Chartered Savings Association to Federal Savings Association; (b) National Bank, Commercial Bank, State Savings Bank, or Credit Union to Federal Savings Association; (c) State Mutual Holding Company to a Federal Mutual Holding Company

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before April 7, 2010. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov*, (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Application for Conversion from: (1) OTS–Regulated, State-Chartered Savings Association to Federal Savings Association; (b) National Bank, State Savings Bank, or Credit Union to Federal Savings Association; (c) State Mutual Holding Company to a Federal Mutual Holding Company.

OMB Number: 1550–0007.

Form Number: OTS–1582.

Regulation Requirement: 12 CFR Part 516, 543, and 552.

Description: The application is reviewed to determine whether it meets applicable eligibility requirements for conversion and complies with applicable OTS policies. Applications are also reviewed to determine whether special conditions are needed to establish the institution's authority to continue activities or investments permitted under state law but not authorized for a Federal association.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 6.

Estimated Burden Hours per Response: 4 hours.

Estimated Frequency of Response: Other.

Estimated Total Burden: 24 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: March 2, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–4851 Filed 3–5–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for 2010 United States Mint America the Beautiful Quarters™ Two-Roll Set, etc.

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the price of the 2010 United States Mint America the Beautiful Quarters Two-Roll Set and the 2010 United States Mint America the Beautiful Quarters 100–Coin Bags.

The 2010 United States Mint America the Beautiful Quarters Two-Roll Sets, featuring Hot Springs National Park, Yellowstone National Park, Yosemite National Park, Grand Canyon National Park, and Mount Hood National Forest, will be priced at $32.95 each. These sets will contain rolls of coins struck at both the United States Mint facilities at Philadelphia and Denver. The first set, featuring Hot Springs National Park, will be released on April 19, 2010.

The 2010 United States Mint America the Beautiful Quarters 100–Coin Bags, also featuring Hot Springs National Park, Yellowstone National Park, Yosemite National Park, Grand Canyon National Park, and Mount Hood National Forest, will be priced at $35.95 each. Bags of coins from both the United States Mint facilities at Philadelphia and Denver will be available. The first bags, featuring Hot Springs National Park, will be released on April 19, 2010.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: March 3, 2010.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. 2010–4866 Filed 3–5–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Request for Public Comment: Community Development Financial Institutions Fund, Community Development Financial and Technical Assistance Awards, Native Initiatives, and Bank Enterprise Awards

AGENCY: Community Development Financial Institutions Fund, U.S. Department of the Treasury.

SUMMARY: This notice invites comments from the public on issues regarding the Community Development Financial Institutions (CDFI) Fund, including the CDFI financial and technical assistance awards, the Native Initiatives and the Bank Enterprise Awards (BEA). In particular, the CDFI Fund is interested in comments from the public related to an array of statutory requirements, in the interest of determining whether the CDFI Fund should seek technical corrections or substantive revisions to the authorizing statute. All materials submitted will be available for public inspection and copying.

DATES: All comments and submissions must be received by May 7, 2010.

ADDRESSES: Comments should be sent by mail to: Scott Berman, Acting Chief Operating Officer, CDFI Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; by e-mail to *cdfihelp@cdfi.treas.gov;* or by facsimile at (202) 622–7754. Please note this is not a toll free number.

FOR FURTHER INFORMATION CONTACT: Information regarding the CDFI Fund may be downloaded from the CDFI Fund's Web site at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION: The CDFI Fund was created by the Riegle Community Development and Regulatory Improvement Act of 1994 for the purpose of promoting economic revitalization and community development through investment in and assistance to community development financial institutions (CDFIs). The CDFI Fund's mission is to expand the capacity of financial institutions to provide credit, capital and financial services to underserved populations and communities in the United States.

The CDFI Fund achieves its purpose by promoting access to capital and local economic growth through: (a) CDFI financial and technical assistance awards, thereby directly investing in, supporting and training CDFIs that provide loans, investments, financial services and technical assistance to underserved populations and communities; (b) allocations of New Markets Tax Credit authority to community development entities, thereby attracting investment from the private sector and facilitating their reinvestment in low-income communities; (c) BEA, thereby providing an incentive to banks to invest in their communities and in other CDFIs; (d) the Native Initiatives, thereby providing financial assistance, technical assistance and training to Native CDFIs and other Native entities proposing to become or create Native CDFIs; (e) Capital Magnet Fund awards thereby providing financial assistance grants to CDFIs and nonprofit housing developers for the purpose of attracting private capital and increasing investment in affordable housing and related activities; and (f) Financial Education and Counseling Pilot awards, thereby providing grants to organizations to provide innovative and replicable

financial education and counseling services for prospective homebuyers.

A. Community Development Financial Institutions Fund

1. Community Development Advisory Board

The statute that authorized the CDFI Fund established the Community Development Advisory Board (Advisory Board), which consists of 15 members, nine of whom are private citizens appointed by the President. The role of the Advisory Board is to advise the CDFI Fund Director on the policies of the CDFI Fund (12 U.S.C. 4703(d)). The CDFI Fund invites and encourages comments and suggestions germane to the need for, purpose and selection criteria of the Advisory Board. The CDFI Fund is particularly interested in comments in the following areas:

(a) Is the current composition of the Advisory Board adequate to represent the needs of CDFIs?

(b) Are there other regulatory or government agencies that should be represented on the Advisory Board?

(c) Is the current national geographic representation and racial, ethnic and gender diversity requirement for Advisory Board membership adequate?

(d) Should there be term limits for the private citizens appointed to the Advisory Board?

(e) Should there be baseline requirements related to the knowledge private citizens appointed to the Advisory Board have about CDFIs and/or community development finance?

(f) Is the requirement to meet at least annually sufficient?

(g) Currently the statute requires that two individuals who are officers of national consumer or public interest organizations (12 U.S.C. 4703(d)(2)(G)(iii)) be on the Advisory Board. Should this requirement be more specific regarding what types of organizations fulfill the requirement?

B. Community Development Financial Institutions (CDFI) Awards

1. Definitions

The statute that authorizes the CDFI Fund defines low-income as an income, adjusted for family size, of not more than 80 percent of the area median income for metropolitan areas and, for nonmetropolitan areas, the greater of 80 percent of the area median income or 80 percent of the statewide nonmetropolitan area median income (12 U.S.C. 4702(17)). The statute defines targeted population as individuals or an identifiable group of individuals, including an Indian tribe, who are low-income persons or otherwise lack adequate access to loans or equity investments (12 U.S.C. 4702(20)). The CDFI Fund is interested in comments regarding all definitions found in the authorizing statute, including the following questions:

(a) Are the definitions for low-income and targeted population still viable? If not, what alternative definitions might be considered?

(b) Should other definitions be added to the statute to ensure that CDFI awards target areas of "high" economic distress? If so, what criteria should be utilized?

(c) The term "subsidiary" means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such service corporation; except that a CDFI that is a corporation shall not be considered to be a subsidiary of any insured depository institution or depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation, and does not otherwise control in any manner the election of a majority of the directors of the corporation. (12 U.S.C. 4702(19); 12 U.S.C. 1813(w)(4)). The term "affiliate" means any company that controls, is controlled by, or is under common control with another company (12 U.S.C. 4702(3); 12 U.S.C. 1841(k)). Are these definitions still viable? If not, what alternative definitions might be considered?

(d) The Federal Housing Finance Agency (FHFA) has issued its final rule regarding CDFI eligibility for membership in the Federal Home Loan Bank System. In its final rule, the FHFA provided several financial definitions (*e.g.*, net asset ratio, operating liquidity ratio, gross revenues, operating expenses, restricted assets, unrestricted cash and cash equivalents). Should the CDFI Fund adopt any or all of these definitions?

(e) Should the CDFI Fund align its definitions for consistency across all CDFI Fund programs?

2. Certification

The CDFI Fund's authorizing statute defines a community development financial institution as an entity that: (i) Has a primary mission of promoting community development; (ii) serves an investment area or targeted population; (iii) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate; (iv) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and (v) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State (12 U.S.C. 4702(5)). The CDFI Fund provides further clarification and guidance regarding CDFI certification in its regulations at 12 CFR part 1805.201. The CDFI Fund invites and encourages comments and suggestions germane to the criteria and purpose of CDFI certification. The CDFI Fund is particularly interested in comments regarding:

(a) Is the criteria established for CDFI certification adequate to ensure that only highly-qualified CDFIs obtain the certification? Should the CDFI Fund seek to only certify highly-qualified CDFIs?

(b) Are there types of CDFIs that are prohibited from certification because of the criteria; if so, what changes are needed?

(c) Should the CDFI Fund more closely align its certification with the FHFA rule requiring a CDFI to submit with its application an independent audit conducted within the prior year, more recent quarterly statements (if available) and financial statements for two years prior to the audited statement?

(d) Should CDFIs be re-certified on a regular basis and, if so, how often?

(e) Presently, the CDFI Fund only requires a CDFI to notify it of material events when applying for an award. Should such notification be required from all certified CDFIs on a regular basis (*e.g.*, every year; every three years)?

(f) Currently, CDFI certification review does not entail an assessment of an organization's underlying financial soundness. Should the CDFI Fund require any or all of the following financial documentation as a condition of certification?

(i) Net asset ratio to total assets of at least 20 percent, with net and total assets including restricted assets (net assets are calculated as the residual value of assets over liabilities);

(ii) Positive net income (gross revenues less total expenses) measured on a three-year rolling average;

(iii) Ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) of at least 30 percent, and loan loss reserves at a specified balance sheet account that reflects the amount reserved for loans expected to be uncollectible;

(iv) Operating liquidity ratio of at least 1.0 for the four most recent quarters and for one or both of the two preceding years (numerator of the ratio

includes unrestricted cash and cash equivalents and the denominator of the ratio is the average quarterly operating expense).

(h) Should the CDFI Fund require certified CDFIs to annually submit current information on financial viability and other data necessary to assess the financial condition and social performance of the CDFI industry?

3. Holding Companies, Subsidiaries and Affiliates

The CDFI Fund's authorizing statute provides conditions for CDFI qualification for a depository institution holding company, subsidiary or affiliate, establishing that a holding company may qualify as a CDFI if the holding company and the subsidiaries and affiliates of the holding company collectively satisfy the requirements to be certified as a CDFI (12 U.S.C. 4702(5)(B) and (C)). The CDFI Fund invites and encourages comments and suggestions germane to this issue, specifically:

(a) Should a certified CDFI that is a holding company, or its subsidiary and affiliate, be allowed to apply for a CDFI Fund award if the depository institution is also applying during the same funding round?

(b) Should holding companies, subsidiaries and affiliates of depository institutions be extended separate CDFI certifications, regardless of whether the entities can collectively satisfy the certification requirements?

(c) Should all CDFI institution types be held to the "Conditions for Qualification of Holding Companies" set forth at 12 U.S.C. 4702(5)(B), as are depository institution holding companies?

4. Geographic and Institutional Diversity

The CDFI Fund's authorizing statute states that the CDFI Fund "shall seek to fund a geographically diverse group of applicants, which shall include applicants from metropolitan, nonmetropolitan, and rural areas" (12 U.S.C. 4706(b)). The CDFI Fund invites and encourages comments and suggestions relating to geographic diversity, especially:

(a) Are CDFI awards adequately geographically diverse; if not, how should the CDFI Fund ensure geographic diversity?

(c) How should the CDFI Fund define metropolitan area?

(d) How should the CDFI Fund define nonmetropolitan area?

(e) How should the CDFI Fund define rural area?

(f) How should the CDFI Fund define underserved rural area?

(g) Are there other underserved areas that should be considered for purposes of geographic diversity?

The CDFI Fund invites and encourages comments regarding institutional diversity as well, including:

(a) Should institutional diversity be a priority of the CDFI Fund?

(b) Should the CDFI Fund designate a specific amount of funding for regulated depository institutions separately from loan funds and venture capital funds? If so, what proportion of the funding should be designated for CDFI banks and CDFI credit unions?

(d) If a special amount is not designated, what can the CDFI Fund do to achieve institutional diversity?

5. Financial Assistance

The CDFI Fund's authorizing statute allows flexibility in the forms of assistance provided. These may include equity investments, deposits, credit union shares, loans, grants and technical assistance, with certain limitations (12 U.S.C. 4707(a)(1)). The statute also sets forth the permissible uses of CDFI financial assistance award proceeds which include, among others, certain commercial facilities, businesses, community facilities, affordable housing and basic financial services (12 U.S.C. 4707(b)(1). The CDFI Fund welcomes comments on issues relating to the forms of financial assistance, qualifications, uses, and general structure, particularly with respect to the following questions:

(a) As implemented through its Notices of Funds Availability (NOFA), which are issued for each funding round, the CDFI Fund has structured two categories for financial assistance applicants:

"Core" and "Small and Emerging CDFI Assistance" (SECA) for applicants that were recently established or that have smaller assets compared to institutional type. Despite these two award categories, many CDFIs have grown and expanded their reach in recent years. Is there a point at which a CDFI should be considered to have "graduated" from and no longer be eligible for CDFI awards? If so, what should be the criteria (*e.g.*, successful award history, asset size, national reach, *etc.*)?

(b) If a CDFI were to "graduate" from CDFI award eligibility, should another program be developed for such an institution; if so, what type of financial assistance should those institutions receive?

(c) Under the CDFI Fund's authorizing statute, the CDFI Fund has the authority to make long-term, low-interest loans to CDFIs, dependent on matching funds. Is there a need for a loan product in addition to the CDFI financial and technical assistance awards and its lending authority? If so, please describe the product, *e.g.*, terms and conditions, matching funds requirement, etc. Should funds be diverted from the CDFI awards to establish a loan pool?

(d) Is there a need for a CDFI federal loan guarantee and if so how would it be structured?

(e) Should a category be created specifically for CDFIs that serve a national market or are intermediaries? If so, what proportion of the appropriation should be allocated for such applicants?

(f) Are there changes the CDFI Fund could make to the financial and technical assistance awards that would make it more accessible or beneficial to certified CDFI banks?

(g) Should the CDFI Fund provide a technical assistance award to an organization (*i.e.*, a community development corporation) that proposes to create a new CDFI, even if that organization is not a CDFI itself?

(h) Should CDFIs be required to provide financial education to their customers; if so should there be a minimum level of education?

6. Award Cap

The CDFI Fund's authorizing statute states that except for technical assistance, the CDFI Fund cannot provide more than $5 million of assistance in total during any three-year period to a single CDFI, its subsidiaries and affiliates (12 U.S.C. 4707(d)). An exception is allowed for up to an additional $3.75 million during the three-year period for a CDFI proposing to establish a subsidiary or affiliate for the purpose of serving an investment area or targeted population outside a State or metropolitan area presently served by the CDFI. The CDFI Fund seeks comments regarding whether awards should have a cap, specifically:

(a) Should CDFI Fund award amounts have a cap or should award amounts be based on merit and availability?

(b) Should subsidiaries and affiliates have a funding cap that is separate from their parent CDFI?

(c) Should the CDFI Fund make an award to only one affiliated organization during the same funding round?

(d) Is "$5 million of assistance in total during any three-year period" too restrictive? If so, what are the alternatives, if any?

7. Matching Fund Requirements

The CDFI Fund's authorizing statute requires that financial assistance awards

must be matched with funds from sources other than the federal government on the basis of not less than one dollar for each dollar provided by the CDFI Fund. It further states that the matching funds "shall be at least comparable in form and value to assistance provided by the Fund" (12 U.S.C. 4707(e)). Assistance cannot be provided until the CDFI has secured firm commitments for the matching funds. The CDFI Fund encourages comments and suggestions germane to match requirements established in the statute, specifically:

(a) Does the dollar-for-dollar matching funds requirement restrict a CDFI's ability to apply for a financial assistance award? If so, what should be the matching funds requirement?

(b) Should the matching funds continue to be restricted to comparable form and value or should any type and source of funding be allowed as matching funds?

(c) The statute provides certain exceptions to the matching funds requirement and provides the CDFI Fund the flexibility to reduce the match requirement by 50 percent in certain circumstances. Is this appropriate?

(d) The statute allows the applicant to provide matching funds in a different form if the applicant has total assets of less than $100,000; serves nonmetropolitan or rural areas; and is not requesting more than $25,000 in assistance. Should this provision apply to all applicants? Should the asset size and assistance request be increased?

C. CDFI Training

The CDFI Fund's authorizing statute gives the CDFI Fund the authority to create a training program to increase the capacity and expertise of CDFIs and other members of the financial services industry to undertake community development finance activities (12 U.S.C. 4708). In August 2009, the CDFI Fund announced a new Capacity-Building Initiative to greatly expand technical assistance and training opportunities for CDFIs nationwide. Comments regarding this new initiative are welcome, specifically:

(a) Will the Capacity-Building Initiative, as currently structured, provide the training that CDFIs need to deliver financial products and services to underserved communities nationwide?

(b) The first training products that will be offered by the Capacity-Building Initiative will include affordable housing and business lending, portfolio management, risk assessment, foreclosure prevention, training in CDFI business processes, and assistance with liquidity and capitalization challenges. What other topics should this initiative provide in the future?

(c) Are other technical assistance and training resources needed?

D. Capitalization Assistance To Enhance Liquidity

The CDFI Fund's authorizing statute created a Liquidity Enhancement (LE) Program (12 U.S.C. 4712) that has never received an appropriation. In general, the statute authorized the CDFI Fund to provide assistance for the purpose of providing capital to organizations to purchase loans or otherwise enhance the liquidity of CDFIs if the primary purpose of the organization is to promote community development. If funds were appropriated for this program:

(1) Any assistance provided by the CDFI Fund would require matching funds on the basis of not less than dollar-for-dollar and would need to be comparable in form and value to the assistance provided by the CDFI Fund; (2) organizations receiving LE Program assistance would not be able to receive other financial or technical assistance from the CDFI Fund; (3) awards could not be made for more than $5 million to an organization or its subsidiaries or affiliates during any three-year period; and (4) certain compliance information would be required. The CDFI Fund welcomes comments on issues relating to the LE Program, particularly with respect to the following questions:

(a) Do CDFIs have a liquidity need?

(b) Would the LE Program, as structured, help address CDFIs' liquidity needs?

(c) Should the restrictions related to the award cap and/or matching funds be removed as a means to create larger impacts?

(d) What changes are needed to make this a viable initiative?

(e) Are there other program ideas better suited to providing liquidity for CDFIs?

E. Native Initiatives

In its fiscal year 2001 appropriation and every fiscal year since, the CDFI Fund has been appropriated funds for the purpose of making financial assistance and technical assistance awards and to provide training designed to benefit Native American, Alaskan Native and Native Hawaiian communities (collectively referred to as "Native Communities"). While Native Initiatives awards have been through several iterations, the current award vehicle are Native American CDFI Assistance (NACA) awards through which the CDFI Fund provides financial and technical assistance awards to Native CDFIs. The CDFI Fund welcomes comments on issues relating to the Native Initiatives, particularly with respect to the following questions:

(a) Should the CDFI Fund seek statutory authority to make the NACA awards permanent?

(b) What other services should the CDFI Fund provide to Native Communities?

(c) What improvements could be made to Native Initiatives and, in particular, to NACA awards?

(d) Should there be a limit on the number of technical assistance grants an applicant can receive?

(e) Should the CDFI Fund provide "seed funding" financial assistance grants to non-certified, emerging Native CDFIs for the purpose of increasing lending in Native Communities?

(f) Many Native CDFIs have grown and expanded their reach in recent years. Is there a point where a Native CDFI should be seen as having "graduated" from NACA financial assistance and be required to compete for a CDFI financial and technical assistance award? Is so, what should be the criteria?

F. Bank Enterprise Awards (BEA)

The purpose of BEA is to provide an incentive for insured depository institutions to increase their activities in distressed communities and provide financial assistance to CDFIs. The CDFI Fund welcomes comments on issues relating to the eligibility of certain activities, qualifications and general program structure, particularly with respect to the following questions:

(1) Are the qualified activity definitions used for BEA still applicable; are there any new definitions that should be included (if so, please provide new definitions)?

(2) An insured depository institution may apply for a BEA award based on its activities during an assessment period, which opens the program to all FDIC-insured banks and thrifts. The statute that authorized BEA (12 U.S.C. 1834a(j)(3)) states that an insured depository institution is defined by section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)), which does not include credit unions whose deposits are insured by the National Credit Union Administration. Currently, credit unions can only be qualified recipients of loans and deposits from BEA applicants ("CDFI Partners"). Should only banks and thrifts certified by the CDFI Fund be eligible to apply for BEA? Should federally insured, certified CDFI credit unions be eligible for BEA? Should only

those applicants of a certain asset class (*e.g.*, "small" banks with less than $1.098 billion in assets) be permitted to apply for BEA? Should there be a minimum funding level for awards (*i.e.*, $6,000)?

(3) The statute that authorized BEA states that insured depository institutions that meet the community development organization requirements shall not be less than three times the amount of the percentage applicable for insured depository institutions that do not meet such requirements (12 U.S.C. 1834a(a)(5)). The statute does require that CDFI-certified banks receive priority in determining award amounts and in funding awards. Should a new priority funding structure be created to specifically fund certified CDFIs before all other types of institutions?

(4) The statute that authorized BEA states that loans and other assistance provided for low- and moderate-income persons in distressed communities, or enterprises integrally involved with such neighborhoods, are qualified activities (12 U.S.C. 1834a(a)(2)(A)).

(a) By applying the criteria of 12 U.S.C. 1834a(b)(3), approximately 2,700 census tracts fully meet the definition of a BEA distressed community. Should the definition of a BEA distressed community be revised and, if so, how?

(b) Should the geographic requirement be eliminated? If so, why?

(c) Should the definition of "integrally involved" (set forth at 12 CFR 1806.103(gg)) be changed? If so, how?

(d) Should a Community Reinvestment Act rating be used by the CDF Fund in its evaluation of a depository institution's commitment to serving low-income and underserved communities?

(5) The statute that authorized BEA specifies the types of qualifying activities and states that the award must be based on an increase in those activities over a period of time (12 U.S.C. 1834a(a)(2)). The current BEA structure bases award amounts solely on a formula and requires a demonstrated increase in activity, making BEA retroactive by design. How should the BEA be restructured, if at all? For example, should BEA have a leverage requirement; should awards be based on future or proposed community development activities, etc.?

(6) The BEA regulations (12 CFR part 1806.201–305) outline the measuring and reporting of qualified activities, calculations for estimating award amounts including the selection process for awards, and award agreements, sanctions, and compliance.

(a) Should these sections be updated? If so, how?

(b) Are any changes needed to make the program work better?

G. Small Business Capital Enhancement Program

The Riegle Community Development and Regulatory Improvement Act of 1994 included a Small Business Capital Enhancement (SBCE) Program (12 U.S.C. 4741), which has never received an appropriation. If funds were appropriated for this program: (1) The SBCE would be a complement to small business capital access programs (CAPs) implemented by certain States that assist financial institutions in providing access to needed debt capital; (2) any State would apply to the CDFI Fund for approval to be a participating State under the SBCE and to be eligible for reimbursement by the CDFI Fund if that State has an established CAP and funds available in the amount of at least $1 for every two people residing in the State are available and committed for use; (3) the SBCE would provide matched funding to States to provide portfolio insurance for business loans based on a separate loss reserve fund for each financial institution; (4) loan terms would be at the discretion of the borrower and financial institution; (5) a participation agreement would be required from all parties and, upon receipt of agreement, the participating State would enroll the loan and make a matching contribution to the reserve fund (not less than the premium charges paid by the borrower and the financial institution); (6) the premium charges would not be permitted to be less than three percent or more than seven percent of the amount of the loan; (7) each State would be required to file a quarterly report with the CDFI Fund indicating the total amount of contributions, among other information; and (8) the CDFI Fund then would reimburse the State in an amount equal to 50 percent of the amount of contributions by the State to the reserve funds that are subject to reimbursement. The CDFI Fund welcomes comments on issues relating to the viability of such a program, especially with respect to the following questions:

(a) Is there a need for the SBCE?

(b) What changes should be made to the SBCE legislation to make it most effective?

(c) Are the limits on reimbursement adequate to meet current need?

(d) Is there another program idea better suited to the needs of America's small businesses?

H. General Comments

The CDFI Fund is interested in any additional comments regarding the Riegle Community Development and Regulatory Improvement Act of 1994.

Authority: 12 U.S.C. Chapter 47, Subchapters 1–2; 12 U.S.C. 1834a.

Dated: March 2, 2010.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2010–4786 Filed 3–5–10; 8:45 am]

BILLING CODE 4810–70–P

Federal Register

Monday,
March 8, 2010

Part II

Department of Commerce

48 CFR Chapter 13
Commerce Acquisition Regulation (CAR); Final Rule

DEPARTMENT OF COMMERCE

48 CFR Chapter 13

[Document No. 080730954–0033–02]

RIN 0605–AA26

Commerce Acquisition Regulation (CAR)

AGENCY: Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: We, the Department of Commerce, issue a final rule to bring the Commerce Acquisition Regulation in alignment with the Federal Acquisition Regulation (FAR) and to streamline DOC's internal policy and guidance. This final rule updates the entire CAR through FAC 2005–21.

DATES: This rule is effective April 7, 2010.

ADDRESSES: The final rule is available on the DOC Web site *http://www.doc.gov,* or *http://www.regulations.gov,* or by contacting the Department of Commerce: Room 1854, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Virna Evans, 202–482–3483.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce implements or supplements the Federal Acquisition Regulations through its own regulations codified in 48 CFR Chapter 13. Collectively, these regulations are known as the Commerce Acquisition Regulation (CAR). The CAR was originally codified on March 30, 1984 and last updated on September 12, 1995 through a final rule published in the **Federal Register.** The Department of Commerce publishes this action to update the CAR to bring the Department of Commerce's policies and procedures in alignment with the FAR through FAC 2005–21. The following is a summary of the overall changes made to the CAR.

The Department amends the CAR to update the regulations since its last revision on September 12, 1995. In order to bring the CAR in alignment with the current provisions of the FAR, the Department added several new provisions to address those instances where the FAR indicates that agency procedures are required or need to be developed, as well as provisions to define roles and responsibilities and provide guidance on Department's policy and procedures for accountable personal property, inherently governmental functions, emergency acquisitions, small business programs, environmental programs, foreign acquisitions, contract financing, protests, disputes, and appeals, major system acquisitions, research and development contracting, security processing, value engineering, and termination of contracts. Moreover, the Department added numerous new clauses that correspond to the new procedural requirements added to the CAR.

In making the updates referenced in this final rule, various sections of the CAR have been renumbered and/or renamed to align with the current structure of the FAR. This amendment facilitates readers in locating the corresponding FAR section in the CAR. In addition, the Department added many references to chapters of the Commerce Acquisition Manual (CAM) to provide further information on the delegation of authority for a specific provision. In particular, the references to the CAM help clarify the roles and responsibilities across the agency and within the Department of Commerce's 5 Operating Units authorized to operate contracting offices (National Institute of Standards and Technology (NIST), National Oceanic and Atmospheric Administration (NOAA), Office of the Secretary, U.S. Census Bureau, and Patent and Trademark Office (PTO)). Finally, the authority citations for the CAR have been revised to correspond to current authority.

For a detailed description of the changes by CAR Part, *see* the proposed rule published on October 13, 2009 in the **Federal Register** (74 FR 52541). The document is also available at *http://www.Regulations.gov* under Docket Number: DOC–2009–0003–0001.

Request for Comments

On October 13, 2009, the Department published and requested public comments on the proposed changes to the CAR. The comment period lasted between October 13, 2009–December 14, 2009. No comments were received from the public during this period. Therefore, the Department adopts without change, the regulations as proposed on October 13, 2009.

Classification

Executive Order 12866: This rule has been determined to be not significant for purposes of Executive Order 12866, Regulatory Planning and Review.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness 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 economic impact on a substantial number of small entities.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule. No comments were received regarding the economic impact of this rule. As a result, a Final Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act: This rule does not impose any new information collections subject to review and approval by OMB under the Paperwork Reduction Act. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

48 CFR Part 1301

Acquisition regulations, Federal acquisition regulations, Government procurement, Government contracts, Procurement, Reporting and recordkeeping requirements.

48 CFR Part 1302

Definitions, Government procurement, Terms.

48 CFR Part 1303

Antitrust, Conflict of interests, Ethical conduct, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1304

Classified information, Computer technology, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1305

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1306

Government procurement, Justifications, Sole source acquisitions.

48 CFR Part 1307

Acquisition planning, Government procurement, Inherently governmental functions, Reporting and recordkeeping requirement.

48 CFR Part 1308

Government procurement, Printing.

48 CFR Part 1309

Debarment, Government procurement, Suspension, Reporting and recordkeeping requirement.

48 CFR Part 1311

Government procurement, Liquidated damages, Market acceptance.

48 CFR Part 1312

Government procurement, Tailoring clauses, Tailoring provisions, Tailoring terms and conditions.

48 CFR Part 1313

BPA, Blanket purchase agreement, Government procurement, Imprest funds, Micro-purchase authority, Purchase order modifications, Small business, Third-party drafts, Training.

48 CFR Part 1314

Equipment inspection, Government procurement, Pre-Bid conference, Pre-proposal conference, Reporting and recordkeeping requirements, Site visit.

48 CFR Part 1315

Evaluation, Indefinite quantity, Inquiries, Government procurement, Oral presentations, Proposal preparation, Reporting and recordkeeping requirements, Should-cost review, Source selection, Unsolicited proposals.

48 CFR Part 1316

Government procurement, Ombudsman.

48 CFR Part 1317

Multi-year contract, Congressional notification, Interagency agreement.

48 CFR Part 1318

Emergency procurement, Reporting and recordkeeping requirements, Contingency operation, Warrants.

48 CFR Part 1319

Partnership agreement, Set aside, Small business, SBA.

48 CFR Part 1322

Aged, Child labor, Civil rights, Equal employment opportunity, Government procurement, Individuals with disabilities, Labor, Labor disputes, Prisoners, Reporting and recordkeeping requirements, Veterans, Wages, Work stoppages.

48 CFR Part 1323

Affirmative procurement program, Air pollution control, Drug abuse, Drug-free workplace, Energy conservation, Environmental, Government procurement, Hazardous substances, Recycling, Renewable energy, Water pollution control.

48 CFR Part 1324

Freedom of Information, Government procurement, privacy.

48 CFR Part 1325

Buy American Act, Customs duties and inspection, Foreign currencies, Foreign trade, Government procurement.

48 CFR Part 1326

Disaster assistance, Government procurement.

48 CFR Part 1327

Copyright, Government procurement, Inventions and patents, Reporting and recordkeeping requirements.

48 CFR Part 1328

Government procurement, Insurance, Reporting and recordkeeping requirements, Surety bonds.

48 CFR Part 1329

Government procurement, Reporting and recordkeeping requirements, Taxes, Tax exemptions.

48 CFR Part 1330

Accounting, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1331

Accounting, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1332

Electronic funds transfer, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1333

Administrative practice and procedure, Claims, Government procurement.

48 CFR Part 1334

Earned value management, EVM, EVMS, Major system acquisition.

48 CFR Part 1335

FFRDC, Human subject.

48 CFR Part 1336

Evaluation boards, Government procurement, Reporting and recordkeeping requirements, Selection.

48 CFR Part 1337

Contractor processing, Government Procurement, Information Technology, Security, Service contracting, Standards.

48 CFR Part 1339

Contractor processing, Government procurement, Information Technology, Security, Service contracting.

48 CFR Part 1341

Government procurement, Reporting and recordkeeping requirements, Utilities.

48 CFR Part 1342

Accounting, Government procurement, Indirect cost rates, Postaward conference, Reporting and recordkeeping requirements.

48 CFR Part 1344

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1345

Government procurement, Government property, Reporting and recordkeeping requirements.

48 CFR Part 1346

Government procurement, Inspection, Reporting and recordkeeping requirements, Warranties.

48 CFR Part 1348

Government procurement, Reporting and recordkeeping requirements, Value Engineering Change Proposals (VECP).

48 CFR Part 1349

Criminal conduct, Default, Fraud, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1350

Government procurement, Hazardous risk, National defense, Nuclear risk, Reporting and recordkeeping requirements.

48 CFR Part 1352

Government procurement, Matrix, Reporting and recordkeeping requirements.

48 CFR Part 1353

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1370

Period of performance, Pre-bid conference, Pre-proposal conference, Site visit.

48 CFR Part 1371

Inspection, Guarantees, Liability, Liens, Ship construction, Ship repair, Vessel, Insurance.

Dated: February 22, 2010.

John F. Charles,

Deputy Assistant Secretary for Administration.

■ For the reasons stated in the preamble, the Department of Commerce revises 48 CFR Chapter 13 to read as follows:

CHAPTER 13—DEPARTMENT OF COMMERCE

SUBCHAPTER A—GENERAL

Part
1301 Department of Commerce Acquisition Regulations System.
1302 Definitions of words and terms.
1303 Improper business practices and personal conflicts of interest.
1304 Administrative matters.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

1305 Publicizing contact actions.
1306 Competition requirements.
1307 Acquisition planning.
1308 Required sources of supplies and services.
1309 Contractor qualifications.
1311 Describing agency needs.
1312 Acquisition of commercial items.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

1313 Simplified acquisition procedures.
1314 Sealed bidding.
1315 Contracting by negotiation.
1316 Types of contracts.
1317 Special contracting methods.
1318 Emergency acquisitions.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

1319 Small business programs.
1322 Application of labor laws to Government acquisitions.
1323 Environment, energy and water efficiency, renewable energy technologies, occupational safety, and drug-free workplace.
1324 Protection of privacy and freedom of information.
1325 Foreign acquisition.
1326 Other socioeconomic programs.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

1327 Patents, data, and copyrights.
1328 Bonds and insurance.
1329 Taxes.
1330 Cost accounting standards administration.
1331 Contract cost principles and procedures.
1332 Contract financing.
1333 Protests, disputes, and appeals.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

1334 Major system acquisition.
1335 Research and development contracting.
1336 Construction and architect-engineer contracts.
1337 Service contracting.
1339 Acquisition of information technology.
1341 Acquisition of utility services.

SUBCHAPTER G—CONTRACT MANAGEMENT

1342 Contract administration.
1344 Subcontracting policies and procedures.
1345 Government property.
1346 Quality assurance.
1348 Value engineering.
1349 Termination of contracts.
1350 Extraordinary contractual actions.

SUBCHAPTER H—CLAUSES AND FORMS

1352 Solicitation provisions and contract clauses.
1353 Forms.

SUBCHAPTER I—DEPARTMENT SUPPLEMENTAL REGULATIONS

1370 Universal solicitation provisions and contract clauses.
1371 Acquisitions involving ship construction and ship repair.

SUBCHAPTER A—GENERAL

PART 1301—DEPARTMENT OF COMMERCE ACQUISITION REGULATIONS SYSTEM

Sec.
1301.000 Scope of part.

Subpart 1301.1—Purpose, Authority, Issuance

1301.101 Purpose.
1301.103 Authority.
1301.104 Applicability.
1301.105 Issuance.
1301.105–1 Publication and code arrangement.
1301.105–2 Arrangement of regulations.
1301.105–3 Copies.

Subpart 1301.3—Agency Acquisition Regulations

1301.301 Policy.
1301.303 Publication and codification.
1301.304 Agency control and compliance procedures.

Subpart 1301.4—Deviations From the FAR

1301.403 Individual deviations.
1301.404 Class deviations.

Subpart 1301.6—Career Development, Contracting Authority, and Responsibilities

1301.601 General.
1301.602 Contracting officers.
1301.602–1 Authority.
1301.602–170 Provisions and clauses.
1301.602–3 Ratification of unauthorized commitments.
1301.602–370 Ratification approval by Procurement Counsel.
1301.603 Selection, appointment, and termination of appointment.
1301.603–1 General.
1301.603–2 Selection.
1301.603–3 Appointment.
1301.603–4 Termination.
1301.670 Appointment of contracting officer's representative (COR).
1301.670–70 Provisions and clauses.
1301.671 Assignment of program and project managers.

Subpart 1301.7—Determinations and Findings

1301.707 Signatory authority.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

1301.000 Scope of part.

This part sets out general Department of Commerce Acquisition Regulation (CAR) policies, including information regarding the maintenance and administration of the CAR, acquisition policies and practices, and procedures for deviation from the CAR and the Federal Acquisition Regulation (FAR). This part describes the Commerce Acquisition Regulation in terms of establishment, relationship to the Federal Acquisition Regulation, arrangement, applicability, and deviation procedures.

Subpart 1301.1—Purpose, Authority, Issuance

1301.101 Purpose.

The CAR establishes uniform acquisition policies and procedures that implement and supplement the FAR. If there is a discrepancy between the CAR and FAR, the FAR will take precedence.

1301.103 Authority.

The CAR is issued under the authority of section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b), and FAR Subpart 1.3 by the Department Procurement Executive pursuant to a delegation initiating from the Secretary of Commerce.

1301.104 Applicability.

The CAR applies to all Department of Commerce (DOC) acquisitions as defined in Part 2 of the FAR, except where expressly excluded.

1301.105 Issuance.

1301.105–1 Publication and code arrangement.

(a) The CAR is published in the **Federal Register,** in cumulative form in the Code of Federal Regulations (CFR), and is available online at the U.S. Department of Commerce, Office of Acquisition Management Web site.

(b) The CAR is issued as Chapter 13 of Title 48 of the CFR.

1301.105–2 Arrangement of regulations.

(a) *General.* The CAR is divided into the same parts, subparts, sections, and subsections as the FAR.

(b) *Numbering.* If the DOC does not have supplemental regulations there will be no corresponding coverage in the CAR, and there will be gaps in the CAR numbering system.

1301.105–3 Copies.

(a) Copies of the CAR in **Federal Register** or CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(b) The CAR is available online at the U.S. Department of Commerce, Office of Acquisition Management Web site (*http://oam.ocs.doc.gov*).

Subpart 1301.3—Agency Acquisition Regulations

1301.301 Policy.

(a) The designee authorized to prescribe the CAR is set forth in the Commerce Acquisition Manual (CAM) 1301.70.

(b) The DOC internal operating guidance and procedures are contained in the CAM and other policy guidance documents issued by the Procurement Executive relating to acquisitions. The DOC Contracting Offices may issue additional guidance and procedures.

1301.303 Publication and codification.

(a) The CAR parallels the FAR in format, arrangement and numbering system. Coverage within the CAR is identified by the prefix "13" or "130" followed by the complete FAR citation to the subsection level (*e.g.*, CAR coverage of FAR 1.602–1 is cited as 1301.602–1).

(b) Supplementary material without a FAR counterpart will be codified using 70 and up as appropriate for the part, subpart, section, or subsection number (*e.g.*, Part 1370, subpart 1301.70, section 1301.370 or subsection 1301.301–70).

1301.304 Agency control and compliance procedures.

Operating unit counsel shall limit issuance of directives that restrain the flexibilities found in the FAR.

Subpart 1301.4—Deviations From the FAR

1301.403 Individual deviations.

The designee authorized to approve individual deviations from the FAR is set forth in CAM 1301.70.

1301.404 Class deviations.

The designee authorized to approve class deviations from the FAR is set forth in CAM 1301.70.

Subpart 1301.6—Career Development, Contracting Authority, and Responsibilities

1301.601 General.

The agency head for procurement matters is the Chief Financial Officer/Assistant Secretary for Administration (CFO/ASA), unless prohibited by statute. The authority for agency head for procurement matters is delegated to the Procurement Executive as the authority to establish lines of contracting authority within DOC and to implement policies and procedures related to the acquisition process. Specific contracting authorities are set forth in CAM 1301.70.

1301.602 Contracting officers.

1301.602–1 Authority.

In accordance with CAM 1301.70, only individuals who have been certified as contracting officers through issuance of a Certificate of Appointment by the Senior Bureau Procurement Official may exercise the authority of DOC contracting officers. In addition to the authority to enter into, administer, and terminate contracts, contracting officers have been delegated certain functions as set out in Appendix A to CAM 1301.70.

1301.602–170 Provisions and clauses.

Insert clause 1352.201–70, *Contracting Officer's Authority,* in all solicitations and contracts.

1301.602–3 Ratification of unauthorized commitments.

(a) Insert clause 1352.201–71, *Ratification Release,* in a contract document under which payment is made for unauthorized commitments after a ratification has been processed.

(b)(1) Unauthorized commitments occur when the Department accepts goods or services in the absence of an enforceable contract entered into by an authorized official. It is the policy of DOC that all acquisitions are to be made only by Government officials having authority to make such acquisitions. Acquisitions made by other than authorized personnel are contrary to Departmental policy and the Department is not bound by any formal or informal type of agreement or contractual commitment which is made by persons who are not delegated contracting authority. Payment for goods or services accepted in the absence of an authorized commitment may be made only through the ratification process. Unauthorized commitments may be considered matters of serious misconduct and may subject the responsible employees to appropriate disciplinary actions.

(2) The delegation of the ratification authority is set forth in CAM 1301.70. All requests for ratification must fully explain the circumstances that gave rise to the unauthorized commitment and detail, if appropriate, any disciplinary action taken with respect to any responsible employee. Ratifications may be approved only if all criteria in FAR 1.602–3 have been met.

1301–602–370 Ratification approval by Procurement Counsel.

Ratifications may not be approved unless the concurrence of Procurement Counsel is obtained.

1301.603 Selection, appointment, and termination of appointment.

1301.603–1 General.

The Department's procurement career management program and system for the selection, appointment, and termination of appointment of contracting officers are described in CAM 1301.6.

1301.603–2 Selection.

In addition to the criteria set forth in FAR 1.603–2, selection of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.603–3 Appointment.

In addition to the criteria set forth in FAR 1.603–3, appointment of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.603–4 Termination.

In addition to the criteria set forth in FAR 1.603–4, termination of contracting officers shall be based upon Section 4 of CAM 1301.6.

1301.670 Appointment of contracting officer's representative (COR).

The Department's Contracting Officer's Representative certification program for the nomination, appointment and cancellation of CORs is described in CAM 1301.670.

1301.670–70 Provisions and clauses.

Insert clause 1352.201–72, *Contracting Officer's Representative (COR),* in all solicitations and contracts where a COR will be appointed.

1301.671 Assignment of program and project managers.

The Department's Program and Project Manager certification program for the assignment and certification of Program and Project Managers is described in CAM 1301.671.

Subpart 1301.7—Determinations and Findings

1301.707 Signatory authority.

Signatory authority for determinations and findings (D&Fs) is specified in the FAR for the associated subject matter unless otherwise noted in CAM 1301.70.

PART 1302—DEFINTIONS OF WORDS AND TERMS

Subpart 1302.1—Definitions

Sec.
1302.101 Definitions.
1302.170 Abbreviations.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1302.1—Definitions

1302.101 Definitions.

Accountable Personal Property means all personal property for which responsibility for control is formally assigned to an individual, and official property records are maintained as set forth in DOC PPMM Chapter 4.

Agency Head (or Head of Agency) (HA) means the Secretary of Commerce, except, pursuant to Department Organization Order (DOO) 10–5, *Chief Financial Officer and Assistant Secretary for Administration,* the head of the agency for procurement matters shall be the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA), unless a statute provides that the authority of the Secretary is non-delegable.

Chief Acquisition Officer (CAO) means the Department's executive-level non-career employee designated pursuant to the *Services Acquisition Reform Act* to advise and assist the head of the agency and other agency officials to ensure the mission of the agency is achieved through the management of the agency's acquisition activities. The CFO/ASA has been designated by the Head of the Agency as the Chief Acquisition Officer for the Department of Commerce.

Civilian Agency Acquisition Council (CAAC) means the council that assists the Administrator of General Services in developing and maintaining the Federal Acquisition Regulation (FAR) System by developing or reviewing all proposed changes to the FAR. The Council is comprised of a representative designated by each of several Federal departments and agencies, including the DOC. The CAAC coordinates its activities with the Defense Acquisition Regulations Council (DARC). The CAAC is authorized under 48 CFR 1.2.

Commerce Acquisition Manual (CAM) means non-regulatory uniform policies and procedures for internal operations associated with acquiring supplies and services within the Department that implements and supplements the FAR and CAR.

Commerce Acquisition Regulation (CAR) means uniform acquisition policies and procedures, which implement and supplement the FAR.

Contracting Activity means the operating units identified under the definition of "Operating Units" below. Contracting activities may or may not have authority to operate contracting offices (*see* definition for *Contracting Office*).

Contracting Office means an office that awards or executes contracts for supplies or services and performs post-award functions. The operating units authorized to operate contracting offices are identified in DAO 208–2.

Contracting Officer means an individual designated authority by the Senior Bureau Procurement Official (BPO) to enter into, administer, and/or terminate contracts and make related determinations and findings. Only those individuals who have been certified as contracting officers, through the issuance of a Certificate of Appointment (Contracting Officer Warrant (SF 1402)), by the BPO in accordance with the requirements and procedures of the CAR and the CAM may exercise the authorities of contracting officers. However, by virtue of their positions, the Head of the Agency, the Procurement Executive, and the Heads of Operating Units are also designated as contracting officers.

Department or Departmental or DOC means the Department of Commerce.

Head of Agency (HA)—see definition for "Agency Head."

Head of Contracting Office (HCO) means those individuals designated by the BPO to head the contracting offices within each operating unit that has designated contracting authority to award and administer contracts. In performing their duties, HCOs are empowered to the full limits of the Department's contracting authority. The HCO must be a procurement professional in the GS–1102 occupational series (or equivalent OPM occupational designation). BPOs will issue each HCO a Contracting Officer Warrant that delegates the authority to enter into, administer, and/or terminate contracts and to make related determinations and findings.

Head of the Contracting Activity (HCA) means, for purposes of delegation of contracting authority, officials who are designated as Heads of Operating Units (those who are assigned by the President or by the Secretary to manage the primary or constituent operating units of the DOC) in orders establishing the respective operating units, with the exception of the Office of the Secretary. Such officials are designated as the HCA for procurements initiated in support of the procurement activities of that operating unit. The Chief Financial Officer and Assistant Secretary for Administration has been designated as the HCA for procurements initiated in support of the programs and activities of the Office of the Secretary and all other Secretarial Offices and Departmental Offices.

Office of Small and Disadvantaged Business Utilization (OSDBU), The means the advocacy and advisory office responsible for promoting the use of small, small disadvantaged, 8(a), women-owned, veteran-owned, service-disabled veteran-owned, and HUBZone small businesses within the Department acquisition process.

Office of the Assistant General Counsel for Administration, Employment & Labor Law Division means the Department Legal Office that provides advice and guidance to management regarding employment and labor law issues, including the legal standards for taking adverse and performance-based actions.

Office of the Assistant General Counsel for Administration, Ethics Law and Program Division means the Department Legal Office that provides advice and guidance regarding conflict of interest statutes, ethics regulations, and related laws.

Operating Units are organizational entities outside the Office of the Secretary charged with carrying out specified substantive functions (*i.e.,* programs) of the Department and are identified in DAO 208–2.

Procurement Counsel means, except for the Patent and Trademark Office (PTO), the Office of the Assistant General Counsel for Finance & Litigation, Contract Law Division, the office responsible for providing legal review of applicable contract actions and procurement legal advice to all operating units, and handling procurement-related litigation. "Procurement Counsel" for all PTO procurement-related actions means Office of General Law.

Procurement Executive (or Senior Procurement Executive (PE)) means the official appointed pursuant to Executive Order 12931 and the Services Acquisition Reform Act of 2003 to carry out the responsibilities identified in both the Executive Order and the Act. The Director for Acquisition Management is the Procurement Executive for the Department of Commerce.

Senior Bureau Procurement Official (BPO) means the senior career procurement official, within each operating unit that has been delegated contracting authority, who is designated as the Senior Bureau Procurement Official. The BPO must be a procurement professional who has both experience and training in the area of Federal procurement and contracting. HCAs may designate one BPO within their organization to carry out the day-to-day functions of managing the contracting activity. BPOs may also serve as the Head of Contracting Office. The Procurement Executive will issue each BPO a Contracting Officer Warrant which delegates the authority to enter into, administer, and/or terminate contracts and to make related determinations and findings.

1302.170 Abbreviations

AIR Additional Item Requirements
BPO Senior Bureau Procurement Official
CAAC Civilian Agency Acquisition Council
CAM Commerce Acquisition Manual
CAO Chief Acquisition Officer
CAR Commerce Acquisition Regulation
CFO/ASA Chief Financial Officer/Assistant Secretary for Administration
CFR Code of Federal Regulations
CO Contracting Officer
COR Contracting Officer's Representative
DAO Departmental Administrative Order
DOC Department of Commerce
DOO Departmental Organizational Order
D&F Determination and Findings
EVMS Earned Value Management System
FAR Federal Acquisition Regulation
HCA Head of Contracting Activity
HCO Head of Contracting Office
IRB Institutional Review Board
JOFOC Justification for Other than Full and Open Competition
NIST National Institute of Standards and Technology
NOAA National Oceanic and Atmospheric Administration
OCI Organizational Conflict of Interest
OCIO Office of the Chief Information Officer
OFPP Office of Federal Procurement Policy
OIG Office of Inspector General
OMB Office of Management and Budget
OS Office of the Secretary
OSDBU Office of Small and Disadvantaged Business Utilization
PE Procurement Executive
PTO Patent and Trademark Office
RFP Request for Proposals
SBA Small Business Administration
OU Operating Unit

PART 1303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1303.1—Safeguards

Sec.
1303.101 Standards of conduct.
1303.101–2 Solicitation and acceptance of gratuities by government personnel.
1303.101–3 Agency regulations.
1303.104 Procurement integrity.
1303.104–4 Disclosure, protection and marking of contractor bid or proposal information and source selection information.
1303.104–7 Violations or possible violations.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting suspected violations of the gratuities clause.
1303.204 Treatment of violations.

Subpart 1303.3—Reports of Suspected Antitrust Violations

1303.303 Reporting suspected antitrust violations.

Subpart 1303.4—Contingent Fees

1303.405 Misrepresentations or violations of the covenant against contingent fees.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.
1303.502–2 Subcontractor kickbacks.

Subpart 1303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1303.602 Exceptions.

Subpart 1303.7—Voiding and Rescinding Contracts

1303.704 Policy.
1303.705 Procedures.

Subpart 1303.8—Limitation on the Payment of Funds To Influence Federal Transactions

1303.804 Policy.
1303.806 Processing suspected violations.

Subpart 1303.9—Whistleblower Protections for Contractor Employees

1303.905 Procedures for investigating complaints.
1303.906 Remedies.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1303.1—Safeguards

1303.101 Standards of conduct.

1303.101–2 Solicitation and acceptance of gratuities by government personnel.

(a) Suspected violations of the prohibition on soliciting and accepting gratuities shall be reported to the Office of the Inspector General in accordance with DAO 207–10, *Inspector General Investigations.*

(b) To obtain legal advice regarding the solicitation and acceptance of gratuities, contact the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division.

1303.101–3 Agency regulations.

The Department has issued rules implementing Executive Order 11222 prescribing employee standards of conduct (*see* DOC Office of General Counsel Web site).

1303.104 Procurement integrity.

1303.104–4 Disclosure, protection and marking of contractor bid or proposal information and source selection information.

Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with FAR Parts 3, 14 and 15, and CAM 1315.3.

1303.104–7 Violations or possible violations.

Suspected violations of the Procurement Integrity Act shall be reported to the individuals designated in CAM 1301.70.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting suspected violations of the gratuities clause.

Suspected violations of the Gratuities clause shall be reported to the HCA in writing detailing the circumstances. The report must identify the contractor and personnel involved, provide a summary of the pertinent evidence and circumstances that indicate a violation, and include any other available supporting documentation. The HCA will evaluate the report, and, if the allegations appear to support a violation, the matter will be referred to the Head of Contracting Office with copies provided to the Senior Procurement Executive and the DOC Office of Inspector General. *See* DAO 207–10 for procedures.

1303.204 Treatment of violations.

(a) The designee authorized to determine violations of the Gratuities clause is set forth in CAM 1301.70.

(b) Upon receipt of an allegation or evidence of a violation of the Gratuities clause, the designee shall conduct a fact-finding. If there is a basis for further action, a signed notice shall be prepared and sent to the contractor by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. If a reply is not received from the contractor within 45 calendar days of sending the notice, a decision shall be made on the

appropriate action to be taken. If a reply is received from the contractor within 45 calendar days of sending the notice, the information in the reply must be considered before making a decision on the appropriate action to be taken. Upon request of the contractor, the contractor shall be provided an opportunity to appear in person to present information concerning the matter. A report shall be prepared following the presentation and the information must be considered when making a decision. A decision shall be made on the basis of all information available, including findings of fact and oral or written information submitted by the contractor. All mitigating factors shall be considered prior to making a final decision concerning what action will be taken.

Subpart 1303.3—Reports of Suspected Antitrust Violations

1303.303 Reporting suspected antitrust violations.

Suspected anti-competitive practices and antitrust law violations, as described in FAR 3.301 and FAR 3.303, shall be reported to the Contract Law Division, by the HCO. A copy of the report shall be sent to the Procurement Executive concurrently with the submission to the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division. The Office of the Assistant General Counsel will submit any required reports to the Attorney General.

Subpart 1303.4—Contingent Fees

1303.405 Misrepresentations or violations of the covenant against contingent fees.

If the contracting officer has specific evidence or other reasonable basis to believe that a violation of the Covenant Against Contingent Fees has occurred, the matter shall be referred to the HCO, who shall, in appropriate circumstances, take one or more of the actions described in FAR 3.405(b). The HCO shall also refer the matter to the DOC Office of the Inspector General as well as the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division. The Office of the Assistant General Counsel for Administration, Ethics Law and Program Division shall refer the matter to the Department of Justice, as appropriate.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

1303.502–2 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act of 1986 shall be reported to the DOC Office of Inspector General.

Subpart 1303.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1303.602 Exceptions.

The designee authorized to make an exception to the policy in FAR 3.601 is set forth in CAM 1301.70.

Subpart 1303.7—Voiding and Rescinding Contracts

1303.704 Policy.

The designee authorized to declare void and rescind contracts, in cases in which there has been a final conviction for any violation of 18 U.S.C. 201–224, is set forth in CAM 1301.70.

1303.705 Procedures.

The designee authorized to declare a contract void and rescinded is set forth in CAM 1301.70. The DOC will follow the procedures set forth in FAR 3.705.

Subpart 1303.8—Limitation on the Payment of Funds To Influence Federal Transactions

1303.804 Policy.

The original OMB Form LLL, Disclosure of Lobbying Activities, shall be retained in the contract file and a copy shall be submitted to the Office of the Assistant General Counsel for Administration, Ethics Law and Program Division.

1303.806 Processing suspected violations.

Suspected violations of 31 U.S.C. 1352 shall be referred to the DOC Office of Inspector General and the Senior Procurement Executive.

Subpart 1303.9—Whistleblower Protections for Contractor Employees

1303.905 Procedures for investigating complaints.

The designee authorized to take specified actions related to Inspector General findings regarding whistleblower complaints of contractor employees is set forth in CAM 1301.70.

1303.906 Remedies.

The designee authorized to determine whether a contractor has subjected an employee to reprisal and to determine the appropriate remedy is set forth in CAM 1301.70.

PART 1304—ADMINISTRATIVE MATTERS

Subpart 1304.2—Contract Distribution

Subpart 1304.6—Contract Reporting

Subpart 1304.8—Government Contract Files

Subpart 1304.13—Personal Identity Verification

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1304.2—Contract Distribution

1301.201 Procedures.

1304.201–70 Accountable personal property.

Provide one copy of all contracts and purchase orders for accountable personal property to the appropriate Departmental property management office(s) for inclusion in the Department's personal property system in accordance with the DOC Personal Property Management Manual. Accountable personal property purchased with a Governmentwide commercial purchase card is also to be reported to the property management office.

Subpart 1304.6—Contract Reporting

1304.602 General.

1304.602–70 Federal Procurement Data System.

Departmental Federal Procurement Data System reporting procedures are set forth in CAM 1304.602.

Subpart 1304.8—Government Contract Files

1304.804 Closeout of contract files.

1304.804–70 Contract closeout procedures.

CAM 1304.804 supplements FAR 4.804 with the Department's contract closeout procedures.

1304.805 Storage, handling, and disposal of contract files.

1304.805–70 Storage, handling, and disposal of contract files.

CAM 1304.804 supplements FAR 4.805 with the Department's procedures for storage, handling, and disposal of contract files.

Subpart 1304.13—Personal Identity Verification

1304.1301 Policy.

(a) Implementation of Federal Information Processing Standards Publication (FIPS PUB) 201 and OMB guidance M–05–24 is set forth in DOC Personal Identify Verification (PIV) Implementation Guidance, which is available on the Office of Security Web site.

(b) The DOC official responsible for verifying contractor employee personal identity is set forth in the DOC Personal Identify Verification (PIV) Implementation Guidance.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1305—PUBLICIZING CONTRACT ACTIONS

Subpart 1305.2—Synopses of Proposed Contract Actions.

Sec.
1305.202 Exceptions.

Subpart 1305.4—Release of Information

1305.403 Requests from Members of Congress.
1305.404 Release of long range acquisition estimates.
1305.404–1 Release procedures.

Subpart 1305.5—Paid Advertisements

1305.502 Authority.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1305.2—Synopses of Proposed Contract Actions

1305.202 Exceptions.

The designee authorized to decide, in writing, that advance notice through the GPE (Governmentwide Point of Entry) is not appropriate or reasonable is set forth in CAM 1301.70.

Subpart 1305.4—Release of Information

1305.403 Requests from Members of Congress.

Requests from Members of Congress shall be handled in accordance with the policies and procedures outlined in DAO 218–2.

1305.404 Release of long-range acquisition estimates.

1305.404–1 Release procedures.

The designee authorized to release long-range acquisition estimates is set forth in CAM 1301.70.

Subpart 1305.5—Paid Advertisements

1305.502 Authority.

The designee authorized to provide authorization for publication of paid advertisements in newspapers is set forth in CAM 1301.70. The contracting officer shall obtain written authorization from the designee.

PART 1306—COMPETITION REQUIREMENTS

Subpart 1306.2—Full and Open Competition after Exclusion of Sources

Sec.
1306.202 Establishing or maintaining alternative sources.

Subpart 1306.3—Other Than Full and Open Competition

1306.302 Circumstances permitting other than full and open competition.
1306.302–5 Authorized or required by statute.
1306.303 Justification.
1306.303–70 Documentation and legal review of justifications.
1306.304 Approval of the justification.

Subpart 1306.5—Competition Advocates

1306.501 Requirement.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1306.2—Full and Open Competition After Exclusion of Sources

1306.202 Establishing or maintaining alternative sources.

The authority to exclude a source from a contract action in order to establish or maintain an alternate source is set forth in CAM 1301.70

Subpart 1306.3—Other Than Full and Open Competition

1306.302 Circumstances permitting other than full and open competition.

1306.302–5 Authorized or required by statute.

In accordance with Executive Order 13457, a sole source acquisition may not be justified on the basis of any earmark included in any non-statutory source, except when otherwise required by law or when an earmark meets the criteria for funding set out in Executive Order 13457.

1306.303 Justifications.

1306.303–70 Documentation and legal review of justifications.

The justification for providing for other than full and open competition in accordance with FAR 6.303–2 shall be provided on Form CD–492, *Justification for Other than Full and Open Competition*. If the estimated value of the procurement is over legal review thresholds, concurrence by the Procurement Counsel is required.

1306.304 Approval of the justification.

The designee authorized to approve justifications for other than full and open competition at the dollar thresholds in FAR 6.304 is set forth in CAM 1301.70.

Subpart 1306.5—Competition Advocates

1306.501 Requirement.

The designee authorized to designate a Competition Advocate for the Department and each procuring activity is set forth in CAM 1301.70.

PART 1307—ACQUISITION PLANNING

Subpart 1307.1—Acquisition Plans

Sec.
1307.102 Policy.
1307.103 Agency head responsibilities
1307.105 Contents of written acquisition plans.

Subpart 1307.3—Contractor versus Government Performance

1307.302 Policy.

Subpart 1307.5—Inherently Governmental Functions

1307.503 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1307.1—Acquisition Plans

1307.102 Policy.

In accordance with FAR 7.102, it is the Department's policy to perform acquisition planning and conduct market research in order to promote the acquisition of commercial items and provide for full and open competition.

1307.103 Agency-head responsibilities.

The designee authorized as responsible for compliance with FAR 7.103 is set forth in CAM 1301.70.

1307.105 Contents of written acquisition plans.

Information on the contents of Acquisition Plans is set forth in CAM 1307.1

Subpart 1307.3—Contractor versus Government Performance

1307.302 Policy.

The Department's competitive sourcing policy and procedures are set forth in CAM 1307.370.

Subpart 1307.5—Inherently Governmental Functions

1307.503 Policy.

All procurement request packages submitted by program offices to initiate a procurement action for services shall contain a written determination by the designated requirements official that affirms that none of the functions to be performed in the statement of work are inherently governmental. This policy applies to all services other than personal services issued under statutory authority. If the contracting officer determines that there are substantial questions whether the work statement involves performance of inherently governmental functions, the contracting officer shall submit the matter for review by Procurement Counsel. Disagreements regarding the determination shall be resolved by the Head of Contracting Office (HCO) after consultation with counsel.

PART 1308—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1308.8—Acquisition of Printing and Related Supplies

Sec.
1308.802 Policy.
1308.802–70 Printing.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1308.8—Acquisition of Printing and Related Supplies

1308.802 Policy.

The designee authorized as the Department's central printing authority is set forth in CAM 1301.70.

1308.802–70 Printing.

Insert clause 1352.208–70, *Restrictions on Printing and Duplicating*, in all solicitations and contracts when printing documents may be required in the performance of the contract.

PART 1309—CONTRACTOR QUALIFICATIONS

Subpart 1309.2—Qualifications Requirements

Sec.
1309.202 Policy.
1309.206 Acquisitions subject to qualification requirements.
1309.206–1 General.

Subpart 1309.4—Debarment, Suspension, and Ineligibility

1309.403 Definitions.
1309.405 Effect of listing.
1309.405–1 Continuation of current contracts.
1309.405–2 Restrictions on subcontracting.
1309.406 Debarment.
1309.406–1 General.
1309.406–3 Procedures.
1309.407 Suspension.
1309.407–1 General.
1309.407–3 Procedures.

Subpart 1309.5—Organizational and Consultant Conflicts of Interest

1309.503 Waiver.
1309.503–70 Waiver.
1309.506 Procedures.
1309.507 Solicitation provisions and contract clauses.
1309.507–1 Solicitation provisions.
1309.507–2 Contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1309.2—Qualifications Requirements

1309.202 Policy.

(a) The designee authorized to establish qualification requirements is set forth in CAM 1301.70.

(b) The designee authorized to waive the requirements of FAR 9.202 (a)(1)(ii) through (4) for up to 2 years with respect to the item subject to the qualification requirement is set forth in CAM 1301.70. This waiver authority does not apply to the qualification requirements contained in a qualified product list, qualified manufacturer list, or qualification bidders list.

(c) The designee authorized to approve proceeding with a procurement, rather than delay the award in order to provide a potential offeror an opportunity to demonstrate its ability to meet the standards specified in the qualifications, is set forth in CAM 1301.70.

1309.206 Acquisitions subject to qualification requirements.

1309.206–1 General.

When the designee authorized in CAM 1301.70 determines that an emergency exists, or elects before or after award not to enforce a qualification requirement it had established, the qualification requirement may not be thereafter enforced unless the agency complies with FAR 9.202(a).

Subpart 1309.4—Debarment, Suspension, and Ineligibility

1309.403 Definitions.

The designees authorized as the Debarring and Suspending Officials are set forth in CAM 1301.70.

1309.405 Effect of listing.

(a) Contracting officers shall review the Excluded Parties List System (EPLS) listing for contractors after the opening of bids or receipt of proposals and, again, immediately prior to award.

(b) The designee authorized to determine that a compelling reason exists to do business with a debarred/suspended contractor is set forth in CAM 1301.70. This designation does not apply to FAR 23.506(e).

1309.405–1 Continuation of current contracts.

(a) The designee authorized to direct the discontinuance of a contract or subcontract because of a debarment, suspension or proposed debarment is set forth in CAM 1301.70.

(b) A written determination must be issued by the designee authorized in CAM 1301.70 before the following actions can be taken with a contractor that is debarred, suspended or proposed for debarment:

(1) Place any orders exceeding the maximum on an indefinite delivery contract;

(2) Place orders under Federal supply schedule contracts, blanket purchase orders or basic ordering agreements; or

(3) Add new work or exercise options that extend the duration of a current contract or order.

1309.405–2 Restrictions on subcontracting.

The designee authorized to provide, in writing, compelling reasons for allowing Government consent to subcontracts with a contractor who is debarred, suspended or proposed for debarment is set forth in CAM 1301.70.

1309.406 Debarment.

1309.406–1 General.

Debarments and proposed debarments shall be effective throughout the Executive branch of the Government unless the designee authorized in CAM 1301.70 states in writing compelling reasons justifying DOC doing business with the contractor.

1309.406–3 Procedures.

(a) *Investigation and referral.* DOC employees shall immediately refer any cause that might serve as the basis for debarment through the contracting officer to the debarring official.

(b) *Decision-making process.* (1) Procedures shall afford the contractor, and any named affiliates, an opportunity to submit information and argument in opposition to the proposed debarment. This may be done in person, in writing or through a representative.

(2) In actions not based upon a conviction or civil judgment, where the

contractor's submission raises a genuine dispute over facts material to the proposed debarment, the following procedures will be followed:

(i) Provide the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person the agency presents;

(ii) A transcribed record of the proceeding will be made, unless the agency and contractor mutually agree to waive the requirement for a transcript. This transcribed record is available to the contractor at cost.

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official in accordance with FAR 9.406–3(c)(1) through (7).

(d) *Debarring official's decision.* (1) For actions based upon a conviction or civil judgment, or when there is no authentic dispute over material facts, the debarring official's decision shall be based on all of the information in the administrative record plus any contractor-submitted data. If there is no suspension in effect, the decision shall be rendered within 30 working days after receipt of any information and argument submitted by the contractor. The debarring official can extend this timeframe for good cause.

(2)(i) When necessary, written findings of fact shall be prepared as to disputed material facts. The debarring official will utilize the information in the written findings of fact, the data submitted by the contractor plus any other information in the administrative record to develop the decision.

(ii) While the debarring official may refer matters involving disputed material facts to another official for findings of fact, the debarring official can disregard any such findings in whole or in part upon a determination that they are clearly erroneous.

(iii) After the conclusion of proceedings with respect to disputed facts, the debarring official will make a decision.

(3) When the proposed debarment is not based upon a conviction or civil judgment, the reason for debarment must be based on a preponderance of the evidence.

(e) *Notice of debarring official's decision.* FAR 9.406–3(e)(1) establishes the notification procedures when a debarment has been imposed, while FAR 9.406–3(e)(2) establishes the procedure when a debarment is not imposed.

(f) Procurement counsel shall assist and advise the debarring official at each stage of the decision-making process.

1309.407 Suspension.

1309.407–1 General.

Suspensions shall be effective throughout the executive branch of the Government, unless the designee set forth in CAM 1301.70 states in writing compelling reasons for continuing to do business with a suspended contractor.

1309.407–3 Procedures.

(a) *Investigation and referral.* DOC employees shall immediately refer any cause that might serve as the basis for suspension through the contracting officer to the suspending official.

(b) *Decision-making process.* (1) Procedures shall afford the contractor, and any named affiliates, an opportunity to submit information and argument in opposition to the proposed suspension. This may be done in person, in writing or through a representative.

(2) In actions not based upon an indictment, where the contractor's submission raises a genuine dispute over facts material to the proposed suspension and if 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 following procedures will be followed:

(i) Provide the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person the agency presents;

(ii) A transcribed record of the proceeding will be made, unless the agency and contractor mutually agree to waive the requirement for a transcript. This transcribed record is available to the contractor at cost.

(c) *Notice of suspension.* A notice of suspension shall be issued by the suspending official in accordance with FAR 9.407–3(c)(1) through (6).

(d) *Suspending official's decision.* (1) For actions based upon an indictment, when there is no authentic dispute over material facts, in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all of the information in the administrative record plus any contractor-submitted data.

(2)(i) When necessary, written findings of fact shall be prepared as to the disputed material facts. The suspending official will utilize the information in the written findings of fact, the data submitted by the contractor plus any other information in the administrative record to develop the decision.

(ii) While the suspending official may refer matters involving disputed material facts to another official for findings of fact, the suspending official can disregard any such findings in whole or in part upon a determination that they are clearly erroneous.

(iii) After the conclusion of proceedings with respect to disputed facts, the suspending official will make a decision.

(3) The suspension may be modified or terminated by the suspending official. However such a decision shall be without prejudice to the subsequent imposition of:

(i) Suspension by any other agency; or

(ii) Debarment by any agency.

(4) The suspending official's decision shall be sent to the contractor and any affiliates involved, in writing, by certified mail, return receipt requested.

(e) Procurement counsel shall assist and advise the suspending official at each stage of the decision-making process.

Subpart 1309.5—Organizational and Consultant Conflicts of Interest

1309.503 Waiver.

1309.503–70 Waiver.

(a) The need for a waiver of an organizational conflict of interest (OCI) may be identified by the contracting officer or by a written request submitted by an offeror or contractor. The contracting officer shall review all of the relevant facts and shall refer the matter to the Senior Bureau Procurement Official, who shall make a written recommendation to the Head of Contracting Activity whether a waiver should be granted to allow for a contract award or for continuation of an existing contract.

(b) Criteria for Waiver of OCIs. Issuance of a waiver shall be limited to those situations in which:

(1) The work to be performed under contract is vital to the agency;

(2) There is no party other than the conflicted party that can perform the contract at issue; and

(3) Contractual and/or technical review and supervision methods cannot be employed to mitigate the conflict.

1309.506 Procedures.

The contracting officer shall resolve an actual or potential OCI in a manner consistent with the approval or direction of the designee authorized in CAM 1301.70. If the responsible contracting officer is also the authorized designee in CAM 1301.70, the contracting officer must obtain approval

from the Senior Bureau Procurement Official.

1309.507 Solicitation provisions and contract clauses.

1309.507–1 Solicitation provisions.

(a) Insert provision 1352.209–70, *Potential Organizational Conflict of Interest*, substantially as written, in solicitations when the contracting officer determines there is a potential organizational conflict of interest.

(b) Insert the clause with its Alternate I when the contracting officer determines the basic clause should not be modified.

1309.507–2 Contract clauses.

(a) In accordance with FAR 9.507–2, insert clause 1352.209–71, *Limitation of Future Contracting*, substantially as written, when the contractor's eligibility for future prime contract or subcontract awards shall be restricted because of services being provided as stated in FAR 9.505–1 through 9.505–4.

(1) Insert the basic clause when the contractor will be providing systems engineering and/or technical direction. (*See* FAR 9.505–1)

(2) Insert the clause with its Alternate I when the contractor will be preparing specifications or work statements. (*See* FAR 9.505–2)

(3) Insert the clause with its Alternate II when the contractor will be providing technical evaluation or advisory and assistance services. (*See* FAR 9.505–3)

(4) Insert the clause with its Alternate III when the contractor will be obtaining access to proprietary information. (*See* FAR 9.505–4)

(5) Insert the clause with its Alternate IV when the contract is a task order contract. The contracting officer may modify Alternate IV to include a list of systems for which task orders may be issued and indicate which organizational conflict of interest provision in paragraph (a)(2) of this clause shall apply.

(6) Insert the clause with its Alternate V when the contract provides for delivery orders. The contracting officer shall indicate in each delivery order which organizational conflict of interest provision in paragraph (a)(2) of this clause shall apply.

(7) Insert the language in Alternate VI when it is necessary to have the restrictions of this clause included in all or some subcontracts, teaming arrangements, and other agreements calling for performance of work related to the contract.

(b) Insert clause 1352.209–72, *Restrictions against Disclosure*, in service contracts, including architect-engineer contracts, and supply and construction contracts requiring a restriction on the release of information developed or obtained in connection with performance of the contract.

(c) Insert the clause 1352.209–73, *Compliance with the Laws*, in all solicitations and contracts.

(d) Insert the clause 1352.209–74, *Organizational Conflict of Interest*, in all solicitations and contracts.

(e) Insert clause 1352.209–75, *Title 13 and Non-Disclosure Requirements*, in all solicitations and contracts for services where the contractor will have access to Title 13 data.

PART 1311—DESCRIBING AGENCY NEEDS

Subpart 1311.1—Selecting and Developing Requirements Documents

Sec.

1311.103 Market acceptance.

Subpart 1311.5—Liquidated Damages

1311.501 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1311.1—Selecting and Developing Requirements Documents

1311.103 Market acceptance.

The designee authorized as the head of the agency is set forth in CAM 1301.70.

Subpart 1311.5—Liquidated Damages

1311.501 Policy.

The designee authorized as the head of the agency is set forth in CAM 1301.70.

PART 1312—ACQUISITION OF COMMERCIAL ITEMS

Subpart 1312.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.

1312.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1312.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

1312.302 Tailoring of provisions and clauses for the acquisition of commercial items.

The authority for approving a request for waiver to tailor a clause, or otherwise include any additional terms or conditions in a solicitation or contract in a manner that is inconsistent with customary commercial practice, is set forth in CAM 1301.70.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1313—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 1313.1—Procedures

Sec.

1313.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

1313.106–2–70 Evaluation of solicitations.

Subpart 1313.2—Actions At or Below the Micro Purchase Threshold

1313.201 General.

Subpart 1313.3—Simplified Acquisitions Methods

1313.301 Governmentwide commercial purchase card.

1313.302 Purchase orders.

1313.302–1–70 Non-commercial purchase orders.

1313.302–3 Obtaining contractor acceptance and modifying purchase orders.

1313.303 Blanket purchase agreements (BPAs).

1313.303–5 Purchases under BPAs.

1313.305 Imprest funds and third party drafts.

1313.305–1 General.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1313.1—Procedures

1313.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

1313.106–2–70 Evaluation of solicitations.

All solicitations using simplified acquisition procedures in FAR Part 13 must include provision 1352.213–70, *Evaluation Utilizing Simplified Acquisition Procedures*, or similar language setting out evaluation criteria.

Subpart 1313.2—Actions At or Below the Micro Purchase Threshold

1313.201 General.

DOC employees, other than warranted contracting officers, must be delegated micro-purchase authority by the designee set forth in CAM 1301.70 according to FAR 1.603–3(b), and must be trained pursuant to CAM 1313.301.

Subpart 1313.3—Simplified Acquisitions Methods

1313.301 Governmentwide commercial purchase card.

The Department's procedures for the use and control of the Governmentwide commercial purchase card are set forth in CAM 1313.301.

1313.302 Purchase orders.

1313.302–1–70 Non-commercial purchase orders.

Insert provision 1352.213–71, *Instructions for Submitting Quotations under the Simplified Acquisition Threshold—Non-Commercial,* or similar language in all solicitations for non-commercial purchase orders under the simplified acquisition threshold. The contracting officer shall indicate whether electronic submissions of quotations will be accepted. Paragraph (b)(4) of provision 1352.213–71 may be tailored based on the evaluation factors.

1313.302–3 Obtaining contractor acceptance and modifying purchase orders.

A contractor's written acceptance of a purchase order modification is required, unless the contracting officer determines otherwise.

1313.303 Blanket Purchase Agreements (BPAs).

1313.303–5 Purchases under BPAs.

(a) Individual purchases shall not exceed the simplified acquisition threshold, subject to the following:

(1) The limitations for individual purchases against BPAs established against Federal Supply Schedule contracts shall be those set forth in the terms and conditions of the schedule contract.

(2) The limitations for individual purchases for commercial item acquisitions against BPAs established under FAR Subpart 13.5 "Test Program for Certain Commercial Items" is the simplified acquisition threshold set forth in FAR Subpart 13.5.

1313.305 Imprest funds and third party drafts.

1313.305–1 General.

(a) *Third-party drafts.* Third-party drafts are not authorized for use by Department of Commerce agencies.

(b) *Imprest Funds.* The *Imprest Fund Policy Directive,* issued November 9, 1999, by the Department of Treasury, required that all Federal agencies eliminate agency use of imprest funds by October 1, 2001, except where provided under the *Imprest Fund Policy Directive.* Requests for exceptions to the requirements of the Imprest Fund Policy Directive should be addressed to DOC's Director of Financial Management. In the case of an approved exception, DOC's procedures for using imprest funds can be found in the Cash Management Policies and Procedures Handbook, available at the Department of Commerce, Office of Financial Management Web site. A copy of all approved exceptions shall be submitted to the Senior Bureau Procurement Official.

PART 1314—SEALED BIDDING

Subpart 1314.2—Solicitation of Bids

Sec.

Subpart 1314.4—Opening of Bids and Awards of Contracts

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1314.2—Solicitation of Bids

1314.201 Preparation of invitation for bids.

1314.201–7 Contract clauses.

The designee authorized to waive the requirement for inclusion of FAR clause 52.214–27 "Price Reduction for Defective Cost and Pricing Data—Modifications—Sealed Bidding" in a contract with a foreign government or agency of that government is set forth in CAM 1301.70.

Subpart 1314.4—Opening of Bids and Awards of Contracts

1314.404 Rejection of bids.

1314.404–1 Cancellation of invitations after opening.

The designee authorized to make the determinations prescribed in FAR 14.401–1(c) and (f) are set forth in CAM 1301.70.

1314.407 Mistakes in bids.

1314.407–3 Other mistakes disclosed before award.

The designee authorized to make the determinations prescribed in FAR 14.407–3(a), (b), (c) and (d) is set forth in CAM 1301.70. Concurrence of Procurement Counsel shall be obtained before issuance of any determination under this section.

1314.409 Information to bidders.

1314.409–1 Award of unclassified contracts.

Requests for records shall be governed by the procedures outlined in DAO 205–14 and 15 CFR Part 4.

PART 1315—CONTRACTING BY NEGOTIATION

Subpart 1315.2—Solicitation and Receipt of Proposals and Information

Sec.

Subpart 1315.3—Source Selection

Subpart 1315.4—Contract Pricing

Subpart 1315.6—Unsolicited Proposals

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1315.2—Solicitation and Receipt of Proposals and Information

1315.204 Contract format.

The designee authorized to grant exemptions from the uniform contract format is set forth in CAM 1301.70.

1315.204–570 Part IV representations and instructions.

(a) *Section L, Instructions, conditions, and notices to offerors or respondents.* (1) The contracting officer shall insert the provision 1352.215–70, *Proposal Preparation,* in all solicitations. Contracting officers should tailor the provision to best meet the Government's needs. Information requested from offerors in Volume II–Technical Proposal, must correspond to the evaluation factors. Contracting officers should not request information that will not be evaluated in accord with the stated technical evaluation factors. Should electronic submission be allowed by the CO, specific instructions must be added.

(2) Insert a provision similar to 1352.215–71, *Instructions for Oral Presentations,* in solicitations when oral presentations will be used. Contracting officers shall tailor the provision to suit their acquisition.

(3) The contracting officer shall insert the provision 1352.215–72, *Inquiries,* in solicitations as determined by the CO. This provision may be modified to satisfy the needs of specific procurements.

(b) *Section M, Evaluation factors for award.* (1) The contracting officer shall insert provision 1352.215–73, *Evaluation Quantities-Indefinite*

Quantity Contract, in solicitations for indefinite quantity and requirements contracts, as appropriate. This provision may be modified to satisfy the needs of specific procurements.

(2) The contracting officer shall insert the provision similar to 1352.215–74, *Best Value Evaluation*, for competitive, best value procurements, tailoring the language as appropriate. If clause 1352.215–74, *Best Value Evaluation*, is used, then clause 1352.215–75 *Evaluation Criteria*, must be used.

(3) The contracting officer shall insert a provision in all solicitations similar to 1352.215–75, *Evaluation Criteria*, to specify evaluation criteria, tailoring the language as appropriate. If the basis for award is lowest price technically acceptable, this must be stated.

(4) The contracting officer shall insert provision 1352.215–76, *Cost or Pricing Data*, in all solicitations when cost or pricing data is required under FAR subpart 15.4.

1315.209 Solicitation provisions and contract clauses.

The designee authorized to waive the examination of records by the Comptroller General is set forth in CAM 1301.70.

Subpart 1315.3—Source Selection

1315.303 Responsibilities.

The contracting officer is designated as the source selection authority for competitive negotiated acquisitions of less than $10,000,000. The source selection authority for large dollar competitive negotiated acquisitions of $10,000,000 or more is the head of the operating unit. The head of the operating unit may re-delegate the authority to a Department manager who is at an organizational level above the contracting officer and who has sufficient rank and professional experience to effectively carry out the functions of a source selection authority.

1315.305 Proposal evaluation.

At the discretion of the contracting officer, cost information may be provided to members of the technical evaluation team.

Subpart 1315.4—Contract Pricing

1315.407 Special cost or pricing areas.

1315.407–4 Should-cost review.

The should-cost review report shall include all elements listed in FAR 15.407–4(a)(1) and be provided to the contracting officer for use in negotiations.

Subpart 1315.6—Unsolicited Proposals

1315.602 Policy.

In accord with FAR 16.602, the DOC encourages the submission of new and innovative ideas which support the DOC mission.

1315.603 General.

DOC will accept for review and consideration unsolicited proposals from any entity. DOC will not pay any costs associated with the preparation of unsolicited proposals. Proposals which do not meet the definition and applicable content and marking requirements of FAR 15.6 will not be considered under any circumstances and will be returned to the submitter. Unsolicited proposals may not be submitted electronically.

1315.604 Agency points of contact.

(a) Unsolicited proposals are to be submitted to the appropriate DOC contracting office. Any person or entity considering the submission of an unsolicited proposal should first determine, based on the subject matter of the proposal, to which DOC operating unit the proposal applies. Proposers should contact the applicable operating unit contracting office to determine procedures for submission and to whom to send the proposal.

(b) Program offices must immediately transmit any unsolicited proposals sent to them to their contracting office. If there is a question concerning which operating unit should evaluate an unsolicited proposal, the contracting office shall identify the proper office, in coordination with the Office of Acquisition Management, if necessary, and transmit the proposal to the applicable contracting office.

1315.606 Agency procedures.

(a) The operating unit contracting office is designated as the point of contact for receipt of unsolicited proposals. Persons within DOC (*e.g.* technical personnel) who receive unsolicited proposals shall forward all documents to their cognizant contracting office.

(b) Within ten working days after receipt by the contracting office of an unsolicited proposal, the contracting office shall review the proposal and determine whether the proposal meets the content and marking requirements of FAR 15.6. If the proposal does not meet these requirements, it shall be returned to the submitter, giving the reasons for noncompliance.

1315.606–2 Evaluation.

(a) If the contracting officer determines, upon initial review, that the unsolicited proposal meets all criteria in FAR 15.606–1, the contracting officer will acknowledge receipt of the proposal, coordinate evaluation with the program office, and provide to the submitter an estimated date that evaluation of the proposal is expected to be completed. The contracting officer shall transmit the proposal to the program office for evaluation, marking it in accord with FAR 15.609(d). If the estimated date for completion of the evaluation cannot be met, the submitter should be informed in a timely manner and provided with a revised evaluation completion date.

(b) The evaluating office shall not reproduce or disseminate the proposal to other offices without the consent of the contracting officer. If the evaluating office requires additional information from the proposer, the evaluator shall request the information through the contracting officer, who will contact the proposer. The evaluator shall not communicate directly with the proposer.

(c) Evaluators shall notify the contracting officer of their recommendations when the evaluation is complete. Following evaluation, the contracting officer shall proceed in accord with FAR 15.607.

PART 1316—TYPES OF CONTRACTS

Subpart 1316.1—Selecting Contract Types

Sec.

Subpart 1316.2—Fixed-Price Contracts

Subpart 1316.3—Cost-Reimbursement Contracts

Subpart 1316.4—Incentive Contracts

Subpart 1316.5—Indefinite-Delivery Contracts

Subpart 1316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1316.1—Selecting Contract Types

1316.103 Negotiating contract type.

1316.103–70 Identifying contract type.

The type of contract shall be stated in each contract awarded.

Subpart 1316.2—Fixed-Price Contracts

1316.203 Fixed-price contracts with economic price adjustment.

1316.203–4 Contract clauses.

Contracting officers shall use an economic price adjustment clause based on cost indexes of labor or material after obtaining approval for use of the clause from the head of the contracting office.

1316.206 Fixed-ceiling-price contract with retroactive price redetermination.

1316.206–3 Limitations.

The designee authorized to approve use of fixed-ceiling-price contracts with retroactive price redetermination is set forth in CAM 1301.70.

Subpart 1316.3—Cost-Reimbursement Contracts

1316.307 Contract clauses.

(a) Insert a clause that is substantially the same as 1352.216–70, *Estimated and Allowable Costs*, in all cost-reimbursement contracts.

(b) Insert a clause similar to 1352.216–71, *Level of Effort (Cost-Plus-Fixed-Fee, Term Contract)*, in Cost-Plus-Fixed-Fee, Level of Effort contracts.

Subpart 1316.4—Incentive Contracts

1316.405 Cost-reimbursement incentive contracts.

1316.405–2 Cost-plus-award-fee contracts.

Insert clause 1352.216–72, *Determination of Award Fee*, in all cost-plus-award-fee contracts.

1316.406 Contract clauses.

Insert a clause substantially the same as 1352.216–73, *Distribution of Award Fee*, in all cost-plus-award-fee solicitations and contracts, as determined by the contracting officer.

Subpart 1316.5—Indefinite-Delivery Contracts

1316.501–2–70 Task orders.

Insert clause 1352.216–74, *Task Orders*, or a substantially similar clause in task order solicitations and contracts, making changes, as appropriate. Contracting officers are encouraged to make appropriate modifications to the time requirements and procedures to meet the Government's needs.

1316.505 Ordering.

The department's Task and Delivery Order Ombudsman is designated in CAM 1301.70.

1316.506 Solicitation provisions and contract clauses.

(a) Insert clause 1352.216–75, *Minimum and Maximum Contract Amounts*, in all indefinite quantity contracts, including requirements contracts, if feasible.

(b) Insert a clause similar to 1352.216–76, *Placement of Orders*, in indefinite-delivery solicitations and contracts.

Subpart 1316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1316.601 Time-and-materials contracts.

The designee authorized to approve a time-and-materials contract prior to the execution of the base period when the base period plus any option periods exceeds three years is set forth in CAM 1301.70.

1316.601–70 Contract clauses.

Insert clause 1352.216–77, *Ceiling Price*, in all time-and-materials contracts.

1316.602 Labor-hour contracts.

1316.602–70 Contract clauses.

Insert clause 1352.216–77, *Ceiling Price*, in all labor-hour contracts, including, if feasible, requirements contracts.

1316.603 Letter contracts.

1316.603–2 Application.

(a) With the written approval from the authorized designee in CAM 1301.70, in extreme cases, the contracting officer may authorize an additional period for contract definitization.

(b) If, after exhausting all reasonable efforts, the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the contracting officer may determine a reasonable price or fee with approval from the authority designated in CAM 1301.70.

1316.603–3 Limitations.

The designee authorized to determine that a letter contract is suitable so that work can begin immediately is set forth in CAM 1301.70.

PART 1317—SPECIAL CONTRACTING METHODS

Subpart 1317.1—Multi-Year Contracting

Subpart 1317.2—Options

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1317.1—Multi-Year Contracting

1317.104 General.

The designee authorized to modify requirements of FAR Subpart 17.1 and FAR 52.217–2 is set forth in CAM 1301.70.

1317.105 Policy.

1317.105–1 Uses.

The designee authorized to make the determination to enter into a multi-year contract is set forth in CAM 1301.70.

1317.108 Congressional notification.

Written notification to Congress shall be handled in accordance with the policies and procedures outlined in DAO 218–2.

Subpart 1317.2—Options

1317.203 Solicitations.

The designee authorized to limit option quantities for additional supplies greater than 50 percent of the initial quantity of the same contract line item is set forth in CAM 1301.70.

Subpart 1317.5—Interagency Acquisitions Under the Economy Act

1317.502 General.

1317.502–70 Policy.

All Interagency Acquisitions shall adhere to the policy set forth in CAM 1317.570.

PART 1318—EMERGENCY ACQUISITIONS

Subpart 1318.2—Emergency Acquisition Flexibilities

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1318.2—Emergency Acquisition Flexibilities

1318.201 Contingency operation.

The designee authorized to serve as the Head of the Agency under FAR 18.201(b) and (c) is set forth in CAM 1301.70.

1318.202 Defense or recovery from certain attacks.

The designee authorized to serve as the Head of the Agency under FAR 18.202(a), (b) and (c) is set forth in CAM 1301.70.

1318.270 Emergency acquisition flexibilities.

(a) *Authorizing emergency acquisition flexibilities.* The process for authorizing the use of emergency procurement flexibilities within the Department of Commerce may vary depending on the nature and type of the emergency situation. However, generally, if a Senior Bureau Procurement Official (BPO) determines that emergency acquisition flexibilities are required to meet contracting needs during an emergency situation, the BPO must obtain the Senior Procurement Executive's concurrence. In the event that increased warrant authority is needed, the BPO should contact the Senior Procurement Executive.

(b) *Continuity of Operations Plan.* Each Contracting Activity shall have an updated Continuity of Operations Plan, in place designating emergency personnel with warrant levels.

(c) *Management controls.* Senior BPOs must take affirmative steps to ensure that emergency flexibilities are used solely for requirements that have a clear and direct relationship to the emergency situation, and that appropriate management controls are established and maintained to support the use of the increased thresholds. The Office of Acquisition Management will conduct periodic reviews of transactions made pursuant to the expanded authorities to evaluate whether the transactions:

(1) Were in support of the emergency situation;

(2) Were made by an authorized individual;

(3) Were appropriately documented; and

(4) Provided the maximum practicable opportunity for small business participation.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1319—SMALL BUSINESS PROGRAMS

Subpart 1319.2—Policies

Sec.
1319.201 General policy.
1319.202 Specific policies.
1319.202–70 Small business set-aside review form.

Subpart 1319.5—Set-Asides for Small Business

1319.502 Setting aside acquisitions.
1319.502–3 Partial set-asides.
1319.505 Rejecting Small Business Administration recommendations.

Subpart 1319.6—Certificates of Competency and Determination of Responsibility

1319.602 Procedures.
1319.602–1 Referral.

Subpart 1319.7—The Small Business Subcontracting Program

1319.705 Responsibilities of the contracting officer under the subcontracting assistance program.
1319.705–4 Reviewing the subcontracting plan.

Subpart 1319.8—Contracting With the Small Business Administration (the 8(a) Program)

1319.800 General.
1319.811 Preparing the contracts.
1319.811–3 Contract clauses.
1319.812 Contract administration.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1319.2—Policies.

1319.201 General policy.

(a) The DOC Office of Small and Disadvantaged Business Utilization (OSDBU) is headed by a Director who shall report and be responsible to the Deputy Secretary on matters of policy and legislative requirements.

(b) Each Contracting Office shall appoint Small Business Specialists to assist the HCA in effectively implementing the small business programs, including achieving program goals.

1319.202 Specific policies.

Procurement actions valued above $100,000 will be reviewed by the Director, OSDBU, or designee for the purpose of making recommendations for solicitation/award under FAR Part 19.

1319.202–70 Small business set-aside review form.

Form CD 570, Small Business Set-Aside Review, shall be submitted for approval to the Operating Unit Counsel Small Business Specialist, and forwarded to the OSDBU for approval. If applicable, the Form CD 570 will be submitted to the SBA Procurement Center Representative (PCR) for review. The Form CD 570 is required for:

(a) Procurement actions valued above $100,000;

(b) Modifications to existing contracts that add new work valued over $550,000 or that increase the total contract cost to over $550,000;

(c) Consolidation of two or more procurement requirements for goods and services.

Subpart 1319.5—Set-Asides for Small Business

1319.502 Setting aside acquisitions.

1319.502–3 Partial set-asides.

A partial set-aside shall not be made if there is a reasonable expectation that only two capable concerns (one large and one small) will respond with offers unless the set-aside is authorized by the designee set forth in CAM 1301.70.

1319.505 Rejecting Small Business Administration recommendations.

(a) The designee authorized to render a decision on the Small Business Administration's appeal of the contracting officer's decision is set forth in CAM 1301:70.

(b) In response to SBA's appeal to the agency head, the designee authorized in CAM 1301.70 shall forward justification for their decision to the agency head.

(c) The designee authorized in CAM 1301.70 shall reply to the SBA within 30 working days after receiving the appeal. The decision of the designee shall be final.

Subpart 1319.6—Certificates of Competency and Determination of Responsibility

1319.602 Procedures.

1319.602–1 Referral.

When the contracting officer determines that the successful small business offeror lacks certain elements of responsibility, the contracting officer will withhold award and refer the matter to the cognizant Small Business Administration Government Contracting Area Office. A copy of the referral shall be provided to the Director of the OSDBU.

Subpart 1319.7—The Small Business Subcontracting Program

1319.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1319.705–4 Reviewing the subcontracting plan.

The prime contractor's proposed subcontracting plan shall be reviewed

by the contracting officer for adequacy, ensuring that the required information, goals, and assurances are included. The contracting officer may obtain advice and recommendations from the SBA procurement center representative, the contracting activity's small business specialist and the DOC OSDBU. The CO shall give the reviewers sufficient time and information to review the plan and ask questions.

Subpart 1319.8—Contracting With the Small Business Administration (the 8(a) Program)

1319.800 General.

(a) By Partnership Agreement between the Small Business Administration (SBA) and the Department of Commerce, the SBA delegated authority to the Senior Procurement Executive to enter into 8(a) prime contracts and purchase orders. To implement this authority, the Senior Procurement Executive has authorized a class FAR deviation to applicable portions of FAR Subpart 19.8 and FAR Part 52. Under the class deviation, the authority to enter into 8(a) prime contracts and purchase orders is re-delegated to contracting officers.

(b) When awarding 8(a) contracts and purchase orders, contracting officers shall operate in accordance with the terms of the Partnership Agreement and take full advantage of the streamlined procedures in the agreement. Contracting officers shall review the responsibilities and procedures for 8(a) awards as outlined in the Partnership Agreement and work closely with their respective Small Business Specialists and the OSDBU.

(c) The Partnership Agreement contains the procedures for submitting an offer letter to the appropriate SBA office. Contracting officers shall provide a copy of all offering letters to the OSDBU when they are transmitted to SBA.

1319.811 Preparing the contracts.

1319.811–3 Contract clauses.

(a) The contracting officer shall insert the clause 1352.219–70, *Section 8(a) Direct Award (Deviation),* in direct contracts and purchase orders processed under the Partnership Agreement. The clauses at FAR 52.219–11, Special 8(a) Contract Conditions, 52.219–12, Special 8(a) Subcontract Conditions, and 52.219–17, Section 8(a) Award, *shall not be used.*

(b) The contracting officer shall insert the clause 1352.219–71, *Notification to Delay Performance (Deviation),* in solicitations and purchase orders issued under the Partnership Agreement.

(c) The contracting officer shall insert the clause 1352.219–72, *Notification of Competition Limited to Eligible 8(a) Concerns, Alternate III (Deviation),* when the acquisition is processed under the Partnership Agreement.

1319.812 Contract administration.

Awards under the Partnership Agreement are subject to 15 U.S.C. 637(a)(21). These contracts shall contain the clause 1352.219–70, *Section 8(a) Direct Award (Deviation),* which requires the contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 1322—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1322.1—Basic Labor Policies

Sec.
1322.101 Labor relations.
1322.101–1 General.
1322.101–3 Reporting labor disputes.
1322.101–4 Removal of items from contractor's facilities affected by work stoppages.
1322.103 Overtime.
1322.103–4 Approvals.

Subpart 1322.3—Contract Work Hours and Safety Standards Act

1322.302 Liquidated damages and overtime pay.

Subpart 1322.4—Labor Standards for Contracts Involving Construction

1322.404 Davis-Bacon Act wage determination.
1322.404–6 Modification of wage determination.
1322.406 Administration and enforcement.
1322.406–8 Investigations.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.604 Exemptions.
1322.604–2 Regulatory exemptions.

Subpart 1322.8—Equal Employment Opportunity

1322.805 Procedures.
1322.807 Exemptions.

Subpart 1322.10—Service Contract Act of 1965, as Amended

1322.1001 Definitions.

Subpart 1322.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

1322.1305 Waivers.

Subpart 1322.14—Employment of Workers With Disabilities

1322.1403 Waivers.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1322.1—Basic Labor Policies

1322.101 Labor relations.

1322.101–1 General.

The designee authorized to designate programs or requirements for contractors notifying the Government of actual or potential labor disputes is set forth in CAM 1301.70.

1322.101–3 Reporting labor disputes.

(a) The designee authorized to report any potential or actual labor disputes that may interfere with performing any contracts under its cognizance is designated in CAM 1301.70.

(b) The contracting officer shall seek legal advice and assistance from Procurement Counsel when a potential or actual labor dispute that may interfere with the contract performance occurs.

1322.101–4 Removal of items from contractors' facilities affected by work stoppages.

The contracting officer shall obtain approval from the head of the contracting office and seek legal advice before initiating any action in accordance with FAR 22.101–4.

1322.103 Overtime.

1322.103–4 Approvals.

Approval of use of overtime may be granted by the approving official as set forth in CAM 1301.70.

Subpart 1322.3—Contract Work Hours and Safety Standards Act

1322.302 Liquidated damages and overtime pay.

The designee authorized to find that the administratively determined liquidated damages due under FAR 22.302(a) are incorrect or that the contactor or subcontractor inadvertently violated the Contract Work Hours and Safety Standards Act is set forth in CAM 1301.70.

Subpart 1322.4—Labor Standards for Contracts Involving Construction

1322.404 Davis-Bacon Act wage determination.

1322.404–6 Modification of wage determination.

The designee authorized to request an extension beyond 90 days after bid opening from the Department of Labor Administrator, Wage and Hour Division is set forth in CAM 1301.70.

1322.406 Administration and enforcement.

1322.406–8 Investigations.

The designee authorized to process a contracting officer's report on labor

standards investigations is set forth in CAM 1301.70.

Subpart 1322.6—Walsh-Healey Public Contracts Act

1322.604 Exemptions.

1322.604–2 Regulatory exemptions.

The designee authorized to request that the Secretary of Labor exempt a contract or class of contracts from Walsh-Healey Act stipulations is set forth in CAM 1301.70.

Subpart 1322.8—Equal Employment Opportunity

1322.805 Procedures.

The designee authorized to approve award without pre-award clearance is set forth in CAM 1301.70.

1322.807 Exemptions.

The designee authorized to exempt a contract from all or part of Executive Order 11246 for national security purposes is set forth in CAM 1301.70.

Subpart 1322.10—Service Contract Act of 1965, as Amended

1322.1001 Definitions.

The DOC labor advisor is the Assistant General Counsel for Administration/Employment & Labor Law Division.

Subpart 1322.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

1322.1305 Waivers.

(a) The designee authorized to waive any requirement in FAR 22.13 if it is determined that the contract is essential to national security is set forth in CAM 1301.70.

(b) The contracting officer must submit requests for waivers to the designee authorized under 1322.1305 (a). The request shall include a justification for the waiver and be available in electronic format.

Subpart 1322.14—Employment of Workers With Disabilities

1322.1403 Waivers.

(a) The designee authorized to waive any or all terms of the clause at FAR 52.222–36 is set forth in CAM 1301.70.

(b) The designee authorized, with the concurrence of the Deputy Assistant Secretary of Labor, to waive any requirement of FAR Subpart 22.14 when it is determined that the contract is essential to the national security, is set forth in CAM 1301.70.

(c) The contracting officer must submit requests for waivers to the designee authorized under 48 CFR 1322.1403 (a) and (b). The request shall include a justification for the waiver and be available in electronic format.

PART 1323—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 1323.2—Energy and Water Efficiency and Renewable Energy

Sec.

1323.204 Procurement exemptions.

Subpart 1323.4—Use of Recovered Materials

1323.404 Agency affirmative procurement programs.

1323.404–70 DOC affirmative procurement program.

Subpart 1323.5—Drug-Free Workplace

1323.506 Suspension of payments, termination of contract and debarment and suspension actions.

Subpart 1323.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

1323.705 Electronic products environmental assessment tool.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1323.2—Energy and Water Efficiency and Renewable Energy

1323.204 Procurement exemptions.

The designee authorized to exempt the procurement of an ENERGY STAR or Federal Energy Management Program (FEMP)-designated product as described in FAR 23.203 is set forth in CAM 1301.70.

Subpart 1323.4—Use of Recovered Materials

1323.404 Agency affirmative procurement programs.

1323.404–70 DOC affirmative procurement program.

The Department of Commerce's affirmative procurement program is described in CAM 1323.70.

Subpart 1323.5—Drug-Free Workplace

1323.506 Suspension of payments, termination of contract and debarment and suspension actions.

The designee authorized to waive a determination to suspend contract payments, terminate a contract for default, or debar or suspend a contractor for Drug-Free Workplace violations, is set forth in CAM 1301.70. This authority may not be delegated.

Subpart 1323.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

1323.705 Electronic products environmental assessment tool.

The procedures for granting exceptions to the requirement in FAR 23.705 are set forth in CAM 1323.70.

PART 1324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1324.1—Protection of Individual Privacy

Sec.

1324.103 Procedures.

Subpart 1324.2—Freedom of Information Act

1324.203 Policy.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1324.1—Protection of Individual Privacy

1324.103 Procedures.

DOC rules implementing the Privacy Act of 1974 are described in 15 CFR Part 4.

Subpart 1324.2—Freedom of Information Act

1324.203 Policy.

DOC's implementation of the Freedom of Information Act is described in 15 CFR Part 4 and DAO 205–14.

PART 1325—FOREIGN ACQUISITION

Subpart 1325.1—Buy American Act—Supplies

Sec.

1325.103 Exceptions.

1325.105 Determining reasonableness of cost.

Subpart 1325.2—Buy American Act—Construction Materials

1325.204 Evaluating offers of foreign construction material.

Subpart 1325.10—Additional Foreign Acquisition Regulations

1325.1001 Waiver of right to examination of records.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1325.1—Buy American Act—Supplies

1325.103 Exceptions.

(a) The designee authorized to make a determination that domestic preference would be inconsistent with the public interest in a case where the DOC has an agreement with a foreign government providing a blanket

exception to the Buy America Act is set forth in CAM 1301.70.

(b)(1) The contracting officer shall submit documentation supporting a nonavailability determination to the DOC's representative to the Civilian Agency Acquisition Council (CAAC). The DOC representative shall forward the documentation to the CAAC for possible removal of the product from the product nonavailablity list at FAR 25.104.

(2) The contracting officer shall submit documentation supporting a determination that nonavailabilty of an article is likely to affect future acquisitions to the DOC's representative to the CAAC for possible addition to the product nonavailability list at FAR 25.104.

1325.105 Determining reasonableness of cost.

The designee authorized to make a written determination that the use of higher evaluation factors than those in FAR 25.105(b) is appropriate is set forth in CAM 1301.70.

Subpart 1325.2—Buy American Act—Construction Materials

1325.204 Evaluating offers of foreign construction material.

The designee authorized to specify a percentage higher than the 6 percent that the contracting officer must add to the cost of any foreign construction material proposed for exception from the requirements of the Buy America Act is set forth in CAM 1301.70.

Subpart 1325.10—Additional Foreign Acquisition Regulations

1325.1001 Waiver of right to examination of records.

The designee authorized to execute a determination and findings in accordance with FAR 25.1001(a)(2)(iii) set forth in CAM 1301.70.

PART 1326—OTHER SOCIOECONOMIC PROGRAMS

Subpart 1326.2—Disaster or Emergency Assistance Activities

Sec.
1326.203 Transition of work.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1326.2—Disaster or Emergency Assistance Activities

1326.203 Transition of work.

The designee authorized to determine that transitioning response, relief, and/or reconstruction activity to a local firm, or firms, is not feasible or practicable as set forth in CAM 1301.70.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1327—PATENTS, DATA, AND COPYRIGHTS

Subpart 1327.2—Patents and Copyrights

Sec.
1327.201 Patent and copyright infringement liability.
1327.201–2 Contract clauses.

Subpart 1327.3—Patent Rights Under Government Contracts

1327.303 Contract clauses.
1327.304 Procedures.
1327.304–4 Appeals.
1327.305 Administration of patent rights clauses.
1327.305–2 Administration by the Government.

Subpart 1327.4—Rights in Data and Copyrights

1327.404 Basic rights in data clause.
1327.404–4 Contractor's release, publication, and use of data.
1327.404–5 Unauthorized, omitted, or incorrect markings.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1327.2—Patents and Copyrights

1327.201 Patent and copyright infringement liability.

1327.201–2 Contract clauses.

The designee authorized to approve the insertion of clause 52.227–5, *Waiver of Indemnity,* in solicitations and contracts is set forth in CAM 1301.70.

Subpart 1327.3—Patent Rights Under Government Contracts

1327.303 Contract clauses.

(a) The designee authorized to determine, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement is set forth in CAM 1301.70.

(b) The designee authorized to determine that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of chapter 18 of title 35 of the United States Code is set forth in CAM 1301.70.

(c) The designee authorized to determine, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement is set forth in CAM 1301.70.

1327.304 Procedures.

1327.304–4 Appeals.

The designee authorized to provide the contractor with a written statement of the basis for taking the actions described in FAR 27.304–5(a) is set forth in CAM 1301.70.

1327.305 Administration of patent rights clauses.

1327.305–2 Administration by the Government.

The contracting officer shall promptly furnish all invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses to the DOC Patent Attorney.

Subpart 1327.4—Rights in Data and Copyrights

1327.404 Basic rights in data clause.

1327.404–4 Contractor's release, publication, and use of data.

(a) Insert clause 1352.227–70, *Rights in Data, Assignment of Copyright,* in all solicitations and contracts if FAR Clause 52.227–17 has been used in the solicitation or contract and the contracting officer wants the contractor to assign copyright to the Government.

(b) In appropriate cases, the contracting officer may place limitations or restrictions on the contractor's exercise of its rights in data first produced in the performance of the contract, including a requirement to assign copyright to the Government or another party.

1327.404–5 Unauthorized, omitted, or incorrect markings.

The designee authorized to concur with the contracting officer's determination that markings are not authorized is set forth in CAM 1301.70.

PART 1328—BONDS AND INSURANCE

Subpart 1328.1—Bonds and Other Financial Protections

Sec.
1328.101 Bid guarantees.
1328.101–1 Policy on use.
1328.105 Other types of bonds.
1328.106 Administration.
1328.106–2 Substitution of surety bonds.
1328.106–6 Furnishing information.

Subpart 1328.2—Sureties and Other Security for Bonds

1328.203 Acceptability of individual sureties.
1328.203–7 Exclusion of individual sureties.

Subpart 1328.3—Insurance

1328.305 Overseas workers' compensation and war-hazard insurance.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1328.1—Bonds and Other Financial Protections

1328.101 Bid guarantees.

1328.101–1 Policy on use.

The designee authorized to make a class waiver for the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required is set forth in CAM 1301.70.

1328.105 Other types of bonds.

The designee authorized to approve using other types of bonds in connection with acquiring particular supplies or services is set forth in CAM 1301.70.

1328.106 Administration.

1328.106–2 Substitution of surety bonds.

The designee authorized to approve substituting a new surety bond for the previously approved original bond is set forth in CAM 1301.70.

1328.106–6 Furnishing information.

When a payment bond has been provided for a contract, the designee authorized to furnish a certified copy of the bond and the contract to any person who makes a proper request is set forth in CAM 1301.70.

Subpart 1328.2—Sureties and Other Security for Bonds

1328.203 Acceptability of individual sureties.

(a) Contracting officers shall obtain the opinion of the Procurement Counsel as to the adequacy of the documents pledging the assets of an individual surety prior to accepting bid guarantee and payment and performance bonds.

(b) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the DOC Office of Inspector General. Policies and procedures for the initiation and conduct of investigations by the Office of Inspector General are prescribed in DAO 207–10, *Inspector General Investigations.*

1328.203–7 Exclusion of individual sureties.

The designee authorized to exclude an individual from acting as a surety on bonds submitted by offerors on procurements by the executive branch of the Federal Government is set forth in CAM 1301.70.

Subpart 1328.3—Insurance

1328.305 Overseas workers' compensation and war-hazard insurance.

The designee authorized to recommend a waiver to the Secretary of Labor is set forth in CAM 1301.70.

1328.310 Contract clause for work on a Government installation.

1328.310–70 Solicitation provisions and contract clauses.

(a) Insert clause 1352.228–70, *Insurance Coverage*, in all contracts when:

(1) Government property is involved;

(2) The contract amount is expected to be over the simplified acquisition threshold, and

(3) The contract will require work on a Government installation

(b)(1) The clause is not required in fixed-price solicitations and contracts if:

(i) Only a small amount of work is required on the Government installation (*e.g.*, a few brief visits per month); or

(ii) All the work on the Government installation is to be performed outside the United States, its possessions and Puerto Rico.

(2) The contracting officer may increase the dollar limits established in the clause when it is determined to be in the best interest of the Government. Prior to increasing the dollar limits the contracting officer shall seek the advice of Procurement Counsel.

(c) Insert clause 1352.228–71, *Deductibles Under Required Insurance Coverage—Cost-Reimbursement*, in all cost-reimbursement contracts when the clause at 1352.228–70, *Insurance Coverage*, is used.

(d) Insert clause 1352.228–72, *Deductibles Under Required Insurance Coverage—Fixed Price*, in all fixed-price contracts when the clause at 1352.228–70, *Insurance Coverage*, is used.

(e) Insert clauses 1352.228–73 through 1352.228–75, unless otherwise indicated by the specific instructions for their use below, in any contract for the lease of aircraft.

(f) Insert clause 1252.228–73, *Loss of or Damage to Leased Aircraft*, in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed $250 and the total rental cost for any single transaction is not in excess of $2,500:

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(g) Insert clause 1352.228–74, *Fair Market Value of Aircraft*, in all aircraft lease/rentals.

(h) The contracting officer shall insert the clause at 1352.228–75, *Risk and Indemnities*, in any contract for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(i) Insert clause 1352.228–76, *Approval of Group Insurance Plans*, in all cost reimbursable contracts.

(j) The contractor shall submit the plan to the CO for approval under cost-reimbursement contracts, before buying insurance under a group insurance plan. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government shall require similar approval.

PART 1329—TAXES

Subpart 1329.1—General

Subpart 1329.2—Federal Excise Taxes

Subpart 1329.3—State and Local Taxes

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1329.1—General

1329.101 Resolving tax problems.

Legal questions relating to tax issues should be referred to the Procurement Counsel.

Subpart 1329.2—Federal Excise Taxes

1329.203 Other Federal tax exemptions.

1329.203–70 DOC Federal tax exemption.

(a) The Office of Acquisition Management has obtained a permit from the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives enabling DOC and its contractors to purchase spirits (*e.g.*, specially denatured spirits) tax-free for non-beverage Government use.

(b) When purchasing spirits for non-beverage use by DOC personnel, the contracting officer shall attach a copy of the permit to the contract. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated.

Subpart 1329.3—State and Local Taxes

1329.303 Application of State and local taxes to government contractors and subcontractors.

The designee authorized to review a proposed designation of a contractor as an agent of the Government is set forth in CAM 1301.70.

PART 1330—COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 1330.2—CAS Program Requirements

Sec.
1330.201 Contract requirements.
1330.201–5 Waiver.
1330.202 Disclosure requirements.
1330.202–2 Impracticality of submission.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1330.2—CAS Program Requirements

1330.201 Contract requirements.

1330.201–5 Waiver.

The designee authorized to waive the applicability of Cost Accounting Standards for a particular contract or subcontract is set forth in CAM 1301.70.

1330.202 Disclosure requirements.

1330.202–2 Impracticality of submission.

The DOC Head of Agency for Procurement is authorized to determine that it is impractical to secure a Disclosure Statement, although submission is required, and to authorize contract award without obtaining the Statement.

PART 1331—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1331.1—Applicability

Sec.
1331.101 Objectives.

Subpart 1331.2—Contracts With Commercial Organizations

1331.205 Selected costs.
1331.205–6 Compensation for personal services.
1331.205–32 Precontract costs.
1331.205–70 Duplication of effort.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1331.1—Applicability

1331.101 Objectives.

The designee authorized to approve individual deviations concerning cost principles is set forth in CAM 1301.70.

Subpart 1331.2—Contracts With Commercial Organizations

1331.205 Selected costs.

1331.205–6 Compensation for personal services.

The designee authorized to waive cost allowability limitations under certain circumstances regarding compensation of foreign nationals is set forth in CAM 1301.70.

1331.205–32 Precontract costs.

If precontract costs are anticipated, pursuant to negotiations and in anticipation of contract award, insert clause 1352.231–70 *Precontract Costs,* in the contract.

1331.205–70 Duplication of effort.

The Department will not pay any costs for work that is duplicative of costs charged against any other contract, subcontract or Government source. Insert clause 1352.231–71, *Duplication of Effort,* in all cost-reimbursement, time and materials, and labor hour solicitations and contracts when applicable.

PART 1332—CONTRACT FINANCING

Sec.
1332.003 Simplified acquisition procedures financing.
1332.006 Reduction or suspension of contract payments upon finding of fraud.
1332.006–1 General.
1332.006–3 Responsibilities.
1332.006–4 Procedures.
1332.006–5 Reporting.

Subpart 1332.1—Non-Commercial Item Purchase Financing

1332.114 Unusual contract financing.

Subpart 1332.2—Commercial Item Purchase Financing

1332.201 Statutory authority.
1332.202 General.
1332.202–1 Policy.

Subpart 1332.4—Advance Payments for Non-Commercial Items

1332.402 General.
1332.404 Exclusions.
1332.407 Interest.

Subpart 1332.5—Progress Payments Based on Costs

1332.501 General.
1332.501–2. Unusual progress payments.

Subpart 1332.7—Contract funding

1332.702 Policy.
1332.702–70 Forms.

Subpart 1332.8—Assignment of claims

1332.802 Conditions.

Subpart 1332.9—Prompt Payment

1332.903 Responsibilities.
1332.906 Making payments.

Subpart 1332.11—Electronic Funds Transfer

1332.1108 Payment by Governmentwide commercial purchase card.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

1332.003 Simplified acquisition procedures financing.

Contract financing may be provided for purchases made under the authority of FAR Part 13. Contract financing shall be made in accordance with FAR Part 32.

1332.006 Reduction or suspension of contract payments under finding of fraud.

1332.006–1 General.

The designee authorized to exercise the responsibility to reduce or suspend contract payments is set forth in CAM 1301.70.

1332.006–3 Responsibilities.

DOC personnel shall immediately report to the Office of Inspector General any apparent or suspected instances where a contractor's request for advance, partial or progress payments is based on fraud in accordance with DAO 207–10, *Inspector General Investigations.*

1332.006–4 Procedures.

(a) The Agency Head as described under 1332.006–4 is set forth in CAM 1301.70.

(b) The Office of Inspector General shall perform the function of the Remedy Coordination Official.

1332.006–5 Reporting.

In accordance with 41 U.S.C. 255, the head of an agency shall prepare a report for each fiscal year in which a recommendation has been received pursuant to FAR 32.006–4(a).

Subpart 1332.1—Non-Commercial Item Purchase Financing

1332.114 Unusual contract financing.

The designee authorized to approve unusual contract financing arrangements is set forth in CAM 1301.70.

Subpart 1332.2—Commercial Item Purchase Financing

1332.201 Statutory authority.

Payment for commercial items may be made under such terms and conditions as the designee authorized in CAM 1301.70 determines are appropriate or customary in the commercial marketplace and are in the best interest of the United States.

1332.202 General.

1332.202–1 Policy.

The designee authorized to approve unusual contract financing is set forth in CAM 1301.70.

Subpart 1332.4—Advance Payments for Non-Commercial Items

1332.402 General.

(a) Advanced payment may be authorized for contracts, other than those at FAR 32.403(a) and (b), only if other types of financing are not reasonably available to the contractor in adequate amounts.

(b) The designee authorized to determine when advance payment is in the public interest or facilitates national defense is set forth in CAM 1301.70.

1332.404 Exclusions.

Advance payments may be authorized for items listed in FAR 32.404(a).

1332.407 Interest.

The designee authorized to approve advance payment without interest is as set forth in CAM 1301.70.

Subpart 1332.5—Progress Payments Based on Costs

1332.501 General.

1332.501–2 Unusual progress payments.

The designee authorized to approve a contractor's request for unusual progress payments is set forth in CAM 1301.70.

Subpart 1332.7—Contract Funding

1332.702 Policy.

Contracting officers shall obtain assurances of available funds only from properly authorized designated certifying officers in accordance with Part 4, Section 1110 of the Treasury Financial Manual.

1332.702–70 Forms.

Contracting officers must obtain an electronic or hardcopy procurement request form on which the availability of adequate funds have been certified by a designated certifying officer. This form must have the name of the certifying official and the certified available funds, as well as the technical and other specifications of the request, administrative approvals, clearances, and information for processing payment.

Subpart 1332.8—Assignment of Claims

1332.802 Conditions.

The designee authorized to receive the written notice of assignment is set forth in CAM 1301.70.

Subpart 1332.9—Prompt Payment

1332.903 Responsibilities.

The designee authorized to establish Prompt Payment policies and procedures is set forth in CAM 1301.70.

1332.906 Making payments.

The designee authorized to allow invoice payments earlier than 7 days prior to the due date as specified in the contract is set forth in CAM 1301.70.

Subpart 1332.11—Electronic Funds Transfer

1332.1108 Payment by Governmentwide commercial purchase card.

Use of the Governmentwide commercial purchase card is subject to the requirements of the FAR, other internal Departmental policies, as well as operating unit policies and procedures related to the purchase card. All purchases made with the purchase card must comply with all procedures and documentation requirements that apply to the procurement action.

PART 1333—PROTESTS, DISPUTES, AND APPEALS

Subpart 1333.1—Protests

Sec.

Subpart 1333.2—Disputes and Appeals

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1333.1—Protests

1333.101 Definitions.

Protest Decision Authority means agency officials above the level of the contracting officer who have been designated by the Procurement Executive to issue agency protest decisions under Executive Order 12979.

1333.102 General.

(a) Contracting officers shall promptly notify the Procurement Counsel, and seek legal advice upon receiving notice that a protest has been filed in any forum.

(b) The designee authorized to determine that a solicitation, proposed award, or award under protest does not comply with the requirements of law or regulation, and to take the actions specified at FAR 33.102 (b) is set forth in CAM 1301.70. Corrective action shall only be taken after consultation with Procurement Counsel.

1333.103 Protests to the agency.

(a) Insert provision 1352.233–70, *Agency Protests*, in all DOC solicitations, except these issued by the U.S. Patent and Trademark Office.

(b) All agency protest decisions shall be reviewed by Procurement Counsel before submission to the protester.

1333.104 Protests to GAO.

1333.104–70 Protests to GAO and Court of Federal Claims.

(a) Insert clause 1352.233–71, *GAO and Court of Federal Claims Protests*, in all DOC solicitations, except those for the U.S. Patent and Trademark Office.

(b) Only Procurement Counsel shall communicate with the Government Accountability Office (GAO), the Court of Federal Claims and the Department of Justice regarding applicable protests. Procurement Counsel shall be responsible for preparation and submission of the agency report to the GAO and litigation reports to the Department of Justice.

(c) The designee authorized to authorize, on a nondelegable basis, the award of a contract when the agency has received notice from the GAO of a preaward protest filed directly with the GAO is set forth in CAM 1301.70.

(d) The designee authorized to authorize, on a nondelegable basis, contract performance notwithstanding protest after award is set forth in CAM 1301.70.

(e) The designee authorized to report and explain the reasons why the agency has not fully implement GAO recommendations with respect to a protest is set forth in CAM 1301.70.

Subpart 1333.2—Disputes and Appeals

1333.203 Applicability.

The designee authorized to determine that the application of the Contract Disputes Act of 1978 to a contract with an international organization or a subsidiary body of that organization would not be in the public interest is set forth in CAM 1301.70.

1333.206 Initiation of a claim.

Contracting officers shall promptly notify Procurement Counsel and seek legal advice upon receiving a contractor claim.

1333.211 Contracting officer's decision.

All contracting officer decisions on claims shall be reviewed by

Procurement Counsel before submission to the contractor.

1333.212 Contracting officer's duties upon appeals.

Only Procurement Counsel will communicate with the Civilian Board of Contract Appeals or the Department of Justice regarding appeals of contracting officer decisions. Procurement Counsel shall be responsible for preparation and submission of all filings with the Board.

1333.215 Contract clauses.

Alternate I of FAR 52.233–1, *Disputes*, may be used at the discretion of the contracting officer.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1334—MAJOR SYSTEM ACQUISITION

Subpart 1334.0—General

Sec.
1334.003 Responsibilities.
1334.005 General requirements.
1334.005–6 Full production.

Subpart 1334.2—Earned Value Management System

1334.201 Policy.
1334.201–70 Policy.
1334.202 Integrated baseline reviews.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1334.0—General

1334.003 Responsibilities.

(a) The designee authorized to carry out the responsibilities described under FAR 34.003 is set forth in CAM 1301.70.

(b) Agency procedures related to major system acquisitions are set forth in DAO 208–3.

1334.005 General requirements.

1334.005–6 Full production.

The designee authorized to reaffirm mission need and program objectives and grant approval to proceed with the award of a contract for full production of a successfully tested major system is set forth in CAM 1301.70.

Subpart 1334.2—Earned Value Management System

1334.201 Policy.

1334.201–70 Policy.

(a) In accordance with the Department's Information Technology Investment Performance Measurement and Performance Reporting Policy, the use of an Earned Value Management System (EVMS) is required for major acquisitions for information technology development in which the development/modernization/enhancement costs are anticipated to equal or exceed $25 million over the life of the acquisition. The Chief Information Officer may require EVMS on other acquisitions if the project merits special attention due to sensitivity, mission criticality, or risk potential.

(b) If a project manager considers the use of an EVMS to be necessary for a major acquisition that does not meet the $25 million threshold, the project manager should conduct a cost/benefit analysis and consult with the OCIO on the advisability of requiring an EVMS.

(c) Project managers, contracting officers, and contracting officer representatives responsible for major acquisitions requiring an EVMS must successfully complete an Earned Value Management course that meets the requirements of the OCIO.

(d) The use of firm-fixed-price type contracts, subcontracts and other agreements are generally not suited to developmental efforts and the use of an EVMS is of limited utility under such arrangements. In the rare cases where a fixed-price type contract is contemplated for a developmental effort, the project manager and contracting officer must consult with the OCIO for guidance to determine whether an EVMS will be required.

(e) The use of an EVMS is generally discouraged for contracts, subcontracts, and other agreements where the period of performance is less than 12 months in duration. Additionally, application of an EVMS to work efforts that are not discrete in nature should be considered on a case-by-case basis.

(f) In cases where the nature of the work does not lend itself to the meaningful use of an EVMS, the OCIO may waive the EVMS requirement if appropriate.

1334.202 Integrated baseline reviews.

An Integrated Baseline Review shall be conducted when an Earned Value Management System is required.

PART 1335—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1335.001 Definitions.
1335.006 Contracting methods and contract type.
1335.014 Government property and title.
1335.016 Broad agency announcement.
1335.016–70 DOC procedures for the use of broad agency announcements.
1335.017 Federally funded research and development centers.
1335.017–2 Establishing or changing an FFRDC.
1335.017–4 Reviewing FFRDCs

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

1335.001 Definitions.

Human subject means a living individual about whom an investigator (whether professional or student) conducting research obtains:

(1) Data through intervention or interaction with the individual, or

(2) Identifiable private information.

Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. "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 which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (*i.e.*, the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

Research means a systematic investigation, including research, development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

1335.006 Contracting methods and contract type.

(a) Insert provision 1352.235–70, *Protection of Human Subjects*, in all solicitations where research services under the contract might involve the use of human subjects. The provision is mandatory where human subjects may be used in performance of the award and may not be modified without consultation with Program Counsel.

(b) Insert clause 1352.235–71, *Protection of Human Subjects—Exemption*, in all contracts where the agency has determined based on documentation submitted by the offeror in response to provision 1352.235–70, *Protection of Human Subjects*, that the research involving human subjects is exempt from the requirements of 15 CFR Part 27 and does not require

Institutional Review Board (IRB) review. The provision is mandatory where an appropriate agency official has determined that the research involving human subjects to be carried out in performance of the award is exempt from15 CFR Part 27, and may not be modified without consultation with Program Counsel.

(c) Insert clause 1352.235–72, *Protection of Human Subjects—Institutional Approval,* in all contracts where the agency has determined based on documentation submitted by the offeror in response to provision 1352.235–70, *Protection of Human Subjects,* that the research involving human subjects is not exempt from the requirements of 15 CFR Part 27 and requires review by a cognizant Institutional Review Board (IRB). The provision is mandatory where an appropriate Agency official has determined that the research involving human subjects to be carried out in performance of the award is not exempt from15 CFR Part 27 and requires review by a cognizant IRB, and may not be modified without consultation with Program Counsel.

(d) Insert clause 1352.235–73, *Protection of Human Subjects—After Initial Contract Award,* in all contracts where at the time of award no research involving human subjects is anticipated, but where decisions made in the course of the research may necessitate the addition of research involving human subjects to the work performed. The provision is mandatory where it is possible that the use of human subjects may be required in performance of the award but is not anticipated at the time of award, and may not be modified without consultation with Program Counsel.

1335.014 Government property and title.

The designee authorized to determine that the policies in FAR 35.014(b)(1)–(4) will not apply regarding title to equipment purchased by nonprofit institutions of higher learning and nonprofit organizations whose primary purpose is the conduct of scientific research is set forth in CAM 1301.70.

1335.016 Broad agency announcement.

1335.016–70 DOC procedures for the use of broad agency announcements.

Procedures for the use of broad agency announcements within the Department of Commerce are set forth in CAM 1335.016.

1335.017 Federal funded research and development centers.

1335.017–2 Establishing or changing an FFRDC.

The designee authorized to approve the establishment of an FFRDC, or change its basic purpose and mission, is set forth in CAM 1301.70.

1335.017–4 Reviewing FFRDCs.

The designee authorized to approve the continuation or termination of the sponsorship of an FFRDC is set forth in CAM 1301.70.

PART 1336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1336.2—Special Aspects of Contract for Construction

Sec.

Subpart 1336.6—Architect-Engineer Services

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1336.2—Special Aspects of Contracting for Construction

1336.203 Government estimate of construction costs.

After award, the independent Government estimated price can be released, upon request, to those firms or individuals who submitted proposals.

1336.270 Special requirements for ship construction

See 48 CFR 1371 for special requirements for acquisition involving ship construction and ship repair.

Subpart 1336.6—Architect-Engineer Services

1336.602 Selection of firms for architect-engineer contracts.

1336.602–2 Evaluation boards.

Permanent and *ad hoc* architect-engineer evaluation boards may include preselection boards. When necessary, members of permanent, *ad hoc,* and preselection boards may be appointed from private practitioners of architecture, engineering, or related professions. Private practitioners may be appointed as deemed necessary by the BPO or higher agency official. The permanent and ad hoc evaluation boards should be comprised of at least a majority of government personnel.

1336.602–4 Selection authority.

Each contracting office shall designate the selection authority based on the complexity of each procurement.

1336.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

(a) In contracts not expected to exceed the simplified acquisition threshold, either or both of the short selection processes set out at FAR 36.602–5 may be used.

(b) Each contracting office shall designate the selection authority based on the complexity of each procurement. The selection authority shall review the selection report and approve it or return it to the chairperson for appropriate revision.

1336.605 Government cost estimate for architect-engineer work.

After award, the independent Government estimated price can be released, upon request, to those firms or individuals who submitted proposals.

1336.609 Contract clauses.

1336.609–1 Design within funding limitations.

The designee authorized to make the determination described at FAR 36.609–1(c)(1) to enable exclusion of the clause at FAR 52.236–22 from the contract is set forth in CAM 1301.70.

PART 1337—SERVICE CONTRACTING

Subpart 1337.1—Service Contracts—General

Sec.

Subpart 1337.2—Advisory and Assistance Services

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1337.1—Service Contracts—General

1337.110 Solicitation provisions and contract clauses.

1337.110–70 Personnel security processing requirements.

(a) CAM 1337.70 establishes procedures for personnel security processing for contractors performing services on or within a Department of Commerce facility or through an information technology (IT) system, as required by the Department of Commerce *Security Manual* and Department of Commerce *Security Program Policy and Minimum Implementation Standards.*

(b) Insert clause 1352.237–70, *Security Processing Requirements—High or Moderate Risk Contracts,* in all service contracts designated as High or Moderate risk that will be performed on a DOC facility or when the contractor will access a DOC IT system.

(c) Insert clause 1352.237–71, *Security Processing Requirements—Low Risk Contracts,* in all service contracts designated as Low Risk that will be performed on or within a Department of Commerce facility or when the contractor will access a DOC IT system.

(d) Insert clause 1352.237–72, *Security Processing Requirements—National Security Contracts,* in all service contracts designated as National Security Contracts that will be performed on or within a Department of Commerce facility or when the contractor will access a DOC IT system.

(e) Insert clause 1352.237–73, *Foreign National Visitor and Guest Access to Departmental Resources,* in all DOC solicitations and contracts for services where foreign national access to any DOC facility or DOC IT system is required. The language of the clause may only be modified by adding more restrictive agency or operating unit counsel-specific guidance.

1337.110–71 Additional DOC clauses related to service contracting.

(a) Insert a clause substantially similar to 1352.237–74, *Progress Reports,* where progress reports are required in order to make periodic payments based upon contract progress made, or if the contracting officer otherwise determines that progress reports are needed.

(b) Insert a clause substantially similar to 1352.237–75, *Key Personnel,* when contract performance requires identification of contractor key personnel.

Subpart 1337.2—Advisory and Assistance Services

1337.204 Guidelines for determining availability of personnel.

The designee authorized to make the determinations described under FAR 37.204 is set forth in CAM 1301.70.

PART 1339—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1339.1—General

Sec.
1339.107 Contract clauses.
1339.107–70 Information security.

Subpart 1339.2—Electronic and Information Technology

1339.270 Solicitation provisions and contract clauses.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1339.1—General

1339.107 Contract clauses.

Insert clause 1352.239–70, *Software License Addendum,* in all contracts when the primary purpose is to purchase new software licenses or renew existing licenses.

1339.107–70 Information security.

(a) For all service acquisitions over the micro-purchase threshold, contracting professionals shall coordinate with the designated Contracting Officer Representative (COR) to complete the *Information Security in Acquisition Checklist.*

(b) When the *Information Security in Acquisition Checklist* indicates that Clause 1352.239–73, *Security Requirements for Information Technology Resources,* is needed, contracting officers shall insert the clause in the solicitation and contracts. If the checklist indicates that the Certification and Accreditation requirement in Clause 1352.239–73 is not required, the contracting officer shall include the statement "*The Certification and Accreditation (C&A) requirements of Clause 1352.239–73 do not apply, and a Security Accreditation Package is not required*" in the statement of work.

(c) Contracting professionals shall insert the appropriate risk designation clause from CAM 1337.70 into DOC solicitations and contracts for services depending upon the level of contractor access privileges to DOC IT systems. In addition, contracting professionals shall document the official contract file to include the rationale for the designated risk level.

Subpart 1339.2—Electronic and Information Technology

1339.270 Solicitation provisions and contract clauses.

(a) Insert provision substantially similar to 1352.239–71, *Electronic and Information Technology,* in solicitations for Electronic and Information (EIT) to which it applies.

(b) Insert clause 1352.239–72, *Security Requirements for Information Technology Resources,* in all DOC solicitations and contracts for Information Technology services. The clause language may only be modified by adding more restrictive agency- or operating unit counsel -specific guidance.

PART 1341—ACQUISITION OF UTILITY SERVICES

Subpart 1341.2—Acquiring Utility Services

Sec.
1341.201 Policy.
1341.202 Procedures.
1341.204 GSA areawide contracts.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1341.2—Acquiring Utility Services

1341.201 Policy.

The designee authorized to enter into a contract pursuant to 42 U.S.C. 8287 (regarding shared energy savings, including cogeneration) is set forth in CAM 1301.70.

1341.202 Procedures.

The designee authorized to approve a determination that a written contract cannot be obtained from a utility supplier refusing to execute a tendered contract, and that the issuance of a purchase order is not feasible, is set forth in CAM 1301.70.

1341.204 GSA areawide Contracts.

The designee authorized to determine that the use of an areawide contract is not advantageous to the Government is set forth in CAM 1301.70.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1342—CONTRACT ADMINISTRATION

Subpart 1342.1—Contract Audit Services

Sec.
1342.102 Assignment of contract audit services.
1342.102–70 Interagency contract administration and audit services.

Subpart 1342.2—Contract Administration Services

1342.202 Assignment of contract administration.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1342.1—Contract Audit Services

1342.102 Assignment of contract audit services.

1342.102–70 Interagency contract administration and audit services.

(a) Generally, the final invoice shall not be approved until a close-out audit has been performed and all outstanding issues have been negotiated or resolved on the following types of contracts valued at $500,000 and above:

(1) Cost-reimbursement type contracts;

(2) The cost-reimbursement portion of fixed-price contracts;

(3) Letter contracts which provide for reimbursement of costs;

(4) Time-and-materials contracts; and

(5) Labor-hour contracts.

(b) If a close-out audit is not required, an audit may be requested regardless of the contract value when the contracting officer determines that an audit is justified under one of the following circumstances:

(1) There is some evidence of fraud or waste;

(2) The contractor's performance under the contract has been questionable;

(3) The contractor had a high incidence of unallowable costs under a previous contract;

(4) The contract is with a newly-established firm, or a firm that has just begun dealing with the Government.

Subpart 1342.2—Contract Administration Services

1342.202 Assignment of contract administration.

The designee authorized to approve delegations of CAO functions not listed in FAR 42.302 is set forth in CAM 1301.70.

Subpart 1342.5—Postaward Orientation

1342.503 Postaward conferences.

1342.503–70 Notice of postaward conference.

Insert a provision similar to 1352.242–70, *Postaward Conference,* in solicitations when the contracting officer determines that a postaward conference is needed.

Subpart 1342.6—Corporate Administrative Contracting Officer

1342.602 Assignment and location.

The designee authorized to approve the need for a corporate administrative contracting officer is set forth in CAM 1301.70.

Subpart 1342.7—Indirect Cost Rates

1342.703 General.

1342.703–2 Certificate of indirect costs.

The designee authorized to waive the requirement for contractor certification of proposed final indirect cost rates is set forth in CAM 1301.70.

PART 1344—SUBCONTRACTING POLICIES AND PROCEDURES

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1344.3—Contractors' Purchasing Systems Reviews

§ 1344.302 Requirements.

The designee authorized to lower or raise the $25 million sales threshold for performing a review to determine if a contractor purchasing system review is needed is set forth in CAM 1301.70.

PART 1345—GOVERNMENT PROPERTY

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1345.1—General

1345.107 Contract clauses.

1345.107–70 Government furnished property.

Insert clause 1352.245–70, *Government Furnished Property,* when Government property is to be furnished to the contractor and the contractor will be accountable for, and have stewardship of, the property.

Subpart 1345.6—Reporting, Reutilization, and Disposal

§ 1345.604 Disposal of surplus property.

Surplus property shall be disposed of in accordance with procedures outlined in the DOC Personal Property Management Manual.

PART 1346—QUALITY ASSURANCE

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1346.4—Government Contract Quality Assurance

1346.401 General.

Agency procedures for documenting government inspection are set forth under Subpart 1346.6.

Subpart 1346.5—Acceptance

1346.503 Place of acceptance.

Insert a clause substantially similar to 1352.246–70, *Place of Acceptance,* in contracts and solicitations to indicate where the acceptance of supplies and/or services will take place.

Subpart 1346.6—Material Inspection and Receiving Reports

1346.601 General.

Each DOC operating unit shall develop instructions and procedures regarding material inspection and receiving reports as appropriate.

Subpart 1346.7—Warranties

1346.704 Authority for use of warranties.

Contracting officers are authorized to approve the use of warranties.

1346.705 Limitations.

Warranties in cost reimbursement contracts are authorized.

1346.710 Contract clauses.

The warranty clauses and alternates under FAR Subpart 46.710 may be used in solicitations and contracts.

PART 1348—VALUE ENGINEERING

Subpart 1348.1—Policies and Procedures

Sec.
1348.102 Policies.

Subpart 1348.2—Contract Clauses

1348.201 Clauses for supply or service contracts.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1348.1—Policies and Procedures

1348.102 Policies.

(a) Contracting activities shall send contractor-submitted Value Engineering Change Proposals (VECPs) to the appropriate technical personnel for review.

(b) Technical personnel shall conduct a comprehensive review of VECPs for technical feasibility, usefulness, and adequacy of the contractor's estimate of cost savings; make a written report; and recommend acceptance or rejection to the contracting officer.

(c) The designee authorized to grant exemptions from value engineering provisions in appropriate supply, service, architect-engineer and construction contracts is set forth in CAM 1301.70.

Subpart 1348.2—Contract Clauses

1348.201 Clauses for supply or service contracts.

The designee authorized to grant exemptions from the requirements of FAR Part 48 for a contract or class of contracts is set forth in CAM 1301.70.

PART 1349—TERMINATION OF CONTRACTS

Subpart 1349.1—General Principles

Sec.
1349.106 Fraud or other criminal conduct.

Subpart 1349.4—Termination for Default

1349.402 Termination of fixed-price contracts for default.
1349.402–3 Procedure for default.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1349.1—General Principles

1349.106 Fraud or other criminal conduct.

If the terminating contracting officer (TCO) suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall immediately discontinue negotiations and prepare a written report concerning the matter. The report shall be submitted to the Bureau Procurement Official, the Office of Inspector General, and the DOC suspension and debarring official. An informational copy shall be provided to Procurement Counsel.

Subpart 1349.4—Termination for Default

1349.402 Termination of fixed-price contracts for default.

1349.402–3 Procedure for default.

No action relating to a default termination, including issuance of a show cause letter, cure notice, or notice of default, shall be taken unless notice has been provided to Procurement Counsel and the Procurement Executive, and the action has been reviewed for legal sufficiency.

PART 1350—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1350.1—Extraordinary Contractual Actions

Sec.
1350.102 Delegation of and limitation on exercise of authority.
1350.102–1 Delegation of authority.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1350.1—Extraordinary Contractual Actions

1350.102 Delegation of and limitation on exercise of authority.

1350.102–1 Delegation of authority.

(a) The designee authorized to approve requests to obligate the government in excess of $55,000 under the extraordinary emergency authority set forth in CAM 1301.70. Such authority may not be delegated below the secretarial level for requests to obligate the Government in excess of $55,000.

(b) The designee authorized to approve any amendment without consideration that increases the contract price or unit price is set forth in CAM 1301.70.

(c) The designee authorized to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, is set forth in CAM 1301.70.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1352.000 Scope of part.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.102 Incorporating provisions and clauses.

Subpart 1352.2—Text of Provisions and Clauses

1352.200 Scope of subpart.
1352.201–70 Contracting officer's authority.
1352.201–71 Ratification release.
1352.201–72 Contracting officer's representative (COR).
1352.208–70 Restrictions on printing and duplicating.
1352.209–70 Potential organizational conflict of interest.
1352.209–71 Limitation of future contracting.
1352.209–72 Restrictions against disclosure.
1352.209–73 Compliance with the laws.
1352.209–74 Organizational conflict of interest.
1352.209–75 Title 13 and non-disclosure requirements.
1352.213–70 Evaluation utilizing simplified acquisition procedures.
1352.213–71 Instructions for submitting quotations under the simplified acquisition threshold—non-commercial.
1352.215–70 Proposal preparation.
1352.215–71 Instructions for oral presentations.
1352.215–72 Inquiries.
1352.215–73 Evaluation quantities-indefinite quantity contract.
1352.215–74 Best value evaluation.
1352.215–75 Evaluation criteria.
1352.215–76 Cost or pricing data.
1352.216–70 Estimated and allowable costs.
1352.216–71 Level of effort (cost-plus-fixed-fee, term contract).
1352.216–72 Determination of award fee.
1352.216–73 Distribution of award fee.
1352.216–74 Task orders.
1352.216–75 Minimum and maximum contract amounts.
1352.216–76 Placement of orders.
1352.216–77 Ceiling price.
1352.219–70 Section 8(a) direct award (Deviation).
1352.219–71 Notification to delay performance (Deviation).
1352.219–72 Notification of competition limited to eligible 8(a) concerns, Alternate III (Deviation).
1352.227–70 Rights in data, assignment of copyright.
1352.228–70 Insurance coverage.
1352.228–71 Deductibles under required insurance coverage—cost reimbursement.
1352.228–72 Deductibles under required insurance coverage—fixed price.
1352.228–73 Loss of or damage to leased aircraft.
1352.228–74 Fair market value of aircraft.

Subpart 1352.3—Provisions and Clauses Matrix

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

1352.000 Scope of part.

This part sets forth solicitation provisions and contract clauses, in addition to those prescribed in FAR Part 52, for use in DOC acquisitions.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.102 Incorporating provisions and clauses.

As stated in the FAR, provisions and clauses should be incorporated by reference in solicitations and contracts to the maximum practical extent, rather than being incorporated in full text. Incorporation by reference is the listing only by title, regulatory citation, and date of the provision or clause. The full text of the referenced solicitation provision or contract clause is contained in the Code of Federal Regulations (CFR). FAR provisions and clauses are located at 48 CFR Chapter 1 and CAM provisions and clauses are located at 48 CFR Chapter 13.

Subpart 1352.2—Text of Provisions and Clauses

1352.200 Scope of subpart.

This subpart sets forth the text of all CAR provisions and clauses and provides a cross-reference to the location in the CAR that prescribes their use.

1352.201–70 Contracting Officer's Authority.

As prescribed in 48 CFR 1301.602–170, insert the following clause:

CONTRACTING OFFICER'S AUTHORITY.

The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract, and, notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price.

(End of clause)

1352.201–71 Ratification release.

As prescribed in 48 CFR 1301.602–3, insert the following clause:

RATIFICATION RELEASE (DATE)

(a) The Government agrees to pay the contractor $_____ for the following items/services:

_____

_____

(b) In consideration for the sum stated above, which is to be paid to the Contractor, or its assignees, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

(1) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows: (or state "None").

(2) Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in said contract.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability) including reasonable expenses incidental thereto, incurred by the Contractor under any provisions of the said contract relating to patents.

(c) The Contractor agrees; in connection with patent matters and with claims which are not released as set forth above, that it will comply with provisions of the said contract, including without limitation, those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

Contractor's Signature: _____

Date: _____

(End of clause)

1352.201–72 Contracting Officer's Representative (COR).

As prescribed in 48 CFR 1301.670–70, insert the following clause:

CONTRACTING OFFICER'S REPRESENTATIVE (COR) (DATE)

(a) _____ is hereby designated as the Contracting Officer's Representative (COR). The COR may be changed at any time by the Government without prior notice to the contractor by a unilateral modification to the contract. The COR is located at:

_____

_____

_____

Phone Number: _____

E-mail: _____

(b) The responsibilities and limitations of the COR are as follows:

(1) The COR is responsible for the technical aspects of the contract and serves as technical liaison with the contractor. The COR is also responsible for the final inspection and acceptance of all deliverables and such other responsibilities as may be specified in the contract.

(2) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the contract price, terms or conditions. Any contractor request for changes shall be

referred to the Contracting Officer directly or through the COR. No such changes shall be made without the express written prior authorization of the Contracting Officer. The Contracting Officer may designate assistant or alternate COR(s) to act for the COR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the contractor.

(End of clause)

1352.208–70 Restrictions on printing and duplicating.

As prescribed in 48 CFR 1308.802–70, insert the following clause:

RESTRICTIONS ON PRINTING AND DUPLICATING (DATE)

(a) The contractor is authorized to duplicate or copy production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 production units in the aggregate of multiple pages. Such pages may not exceed a maximum image size of 10¾ by 14¼ inches. A "production unit" is one sheet, size 8½ x 11 inches (215 x 280 mm), one side only, and one color ink. Production unit requirements are outlined in the Government Printing and Binding Regulations.

(b) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the contractor to respond to the terms of the contract).

(c) Costs associated with printing, duplicating, or copying in excess of the limits in paragraph (a) of this clause are unallowable without prior written approval of the Contracting Officer. If the contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating or copying, it shall immediately provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with FAR 8.802.

(d) The contractor shall include in each subcontract which may involve a requirement for any printing, duplicating, and copying in excess of the limits specified in paragraph (a) of this clause, a provision substantially the same as this clause, including this paragraph (d).

(End of clause)

1352.209–70 Potential organizational conflict of interest.

As prescribed in 48 CFR 1309.507–1(a), insert the following provision, modified appropriately:

POTENTIAL ORGANIZATIONAL CONFLICT OF INTEREST (DATE)

(a) There is a potential organizational conflict of interest (*see* FAR Subpart 9.5, Organizational and Consultant Conflicts of Interest) due to [*state the noture of the potential conflict*]. Accordingly:

(1) Restrictions are needed to ensure that (*stote the noture of the proposed restraint and the opplicoble time period*).

(2) As a part of the proposal, the offeror shall provide the Contracting Officer with complete information regarding previous or ongoing work that is in any way associated with the contemplated acquisition.

(b) If award is made to the offeror, the resulting contract may include an organizational conflict of interest limitation applicable to subsequent Government work, at either a prime contract level, at any subcontract tier, or both. During evaluation of proposals, the Government may, after discussions with the offeror and consideration of ways to avoid the conflict of interest, insert a provision in the resulting contract that shall disqualify the offeror from further consideration for award of specified future contracts.

(c) The organizational conflict of interest clause included in this solicitation may be modified or deleted during negotiations.

Alternote I (DATE). At the discretion of the Contracting Officer, substitute the following paragraph (b) for paragraphs (b) and (c) in the basic provision:

(b) The organizational conflict of interest clause in this solicitation may not be modified or deleted.

(End of clause)

1352.209–71 Limitation of future contracting.

As prescribed in 48 CFR 1309.507–2(a), insert the following clause:

LIMITATION OF FUTURE CONTRACTING (DATE)

(a) The following restrictions and definitions apply to prevent conflicting roles, which may bias the contractor's judgment or objectivity, or to preclude the contractor from obtaining an unfair competitive advantage in concurrent or future acquisitions.

(1) Descriptions or definitions:

(i) "Contractor" means the business entity receiving the award of this contract, its parents, affiliates, divisions and subsidiaries, and successors in interest.

(ii) "Development" means all efforts towards solution of broadly defined problems. This may encompass research, evaluating technical feasibility, proof of design and test, or engineering of programs not yet approved for acquisition or operation.

(iii) "Proprietary Information" means all information designated as proprietary in accordance with law and regulation, and held in confidence or disclosed under restriction to prevent uncontrolled distribution. Examples include limited or restricted data, trade secrets, sensitive financial information, and computer software; and may appear in cost and pricing data or involve classified information.

(iv) "System" means the system that is the subject of this contract.

(v) "System Life" means all phases of the system's development, production, or support.

(vi) "Systems Engineering" means preparing specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design.

(vii) "Technical Direction" means developing work statements, determining parameters, directing other contractors' operations, or resolving technical controversies.

(2) Restrictions: The contractor shall perform systems engineering and/or technical direction, but will not have overall contractual responsibility for the system's development, integration, assembly and checkout, or production. The parties recognize that the contractor shall occupy a highly influential and responsible position in determining the system's basic concepts and supervising their execution by other contractors. The contractor's judgment and recommendations must be objective, impartial, and independent. To avoid the prospect of the contractor's judgment or recommendations being influenced by its own products or capabilities, it is agreed that the contractor is precluded for the life of the system from award of a DOC contract to supply the system or any of its major components, and from acting as a subcontractor or consultant to a DOC supplier for the system or any of its major components.

Alternote I (DATE). As prescribed in CFR 1309.507–2(a)(2), either substitute paragraph (a)(2) of the basic clause with one or both of the following paragraphs, or use one or both in addition to the basic paragraph (a)(2).

(a)(2)(i) The contractor shall prepare and submit complete specifications for nondevelopmental items to be used in a competitive acquisition. The contractor shall not furnish these items to DOC, either as a prime contractor or subcontractor, for the duration of the initial production contract plus [*insert o specific period of time or on expirotion dote*].

(ii) The contractor shall either prepare or assist in preparing a work statement for use in competitively acquiring the [*identify the system or services*], or provide material leading directly, predictably, and without delay to such a work statement. The contractor may not supply [*identify the services, the system, or the major components of the system*] for a period [*stote the durotion of the constraint, however, the durotion of the initiol production contract sholl be the minimum*], as either the prime or subcontractor unless it becomes the sole source, has participated in the design or development work, or more than one contractor has participated in preparing the work statement.

Alternote II (DATE). As prescribed in 48 CFR 1309.507–2(a)(3), either substitute paragraph (a) (2) of the basic clause with the following paragraph, or add the following in addition to the basic restriction. Redesignate the paragraphs as needed if more than one restriction applies.

(a)(2) The contractor shall participate in the technical evaluation of other contractors' proposals or products. To ensure objectivity, the contractor is precluded from award of any supply or service contract or subcontract for the system or its major components. This restriction shall be effective for (*insert o definite period of time*).

Alternate III (DATE). As prescribed in 48 CFR 1309.507–2(a)(4), add the following paragraph (b) to the basic clause:

(b) The contractor may gain access to proprietary information of other companies during contract performance. The contractor agrees to enter into company-to-company agreements to protect another company's information from unauthorized use or disclosure for as long as it is considered proprietary by the other company, and to refrain from using the information for any purpose other than that for which it was furnished. For information purposes, the contractor shall furnish copies of these agreements to the Contracting Officer. These agreements are not intended to protect information which is available to the Government or to the contractor from other sources and information furnished voluntarily without restriction.

Alternate IV (DATE). As prescribed in 48 CFR 1309.507–2(a)(5), add the following paragraph (b) to the basic clause substantially as written. If Alternate III is also used, designate this paragraph (c).

(b) The contractor agrees to accept and to complete all issued task orders, and to not contract with Government prime contractors or first-tier subcontractors in such a way as to create an organizational conflict of interest.

Alternate V (DATE). As prescribed in 48 CRF 1309.507–2(a)(6), add the following paragraph (b) to the basic clause. If more than one Alternate is used, redesignate this paragraph accordingly.

(b) The contractor agrees to accept and to complete issued delivery orders, provided that no new organizational conflicts of interest are created by the acceptance of such orders. The Contracting Officer shall identify any and all organizational conflicts of interest in each order. The contractor shall not contract with Government prime contractors or first-tier subcontractors in such a way as to create an organizational conflict of interest.

Alternative VI (DATE). As prescribed in 48 CFR 1309.507–2(a)(7), add the following paragraph (b) to the basic clause. If either Alternate III or IV or both are used, redesignate this paragraph accordingly.

(b) The above restrictions shall be included in all subcontracts, teaming arrangements, and other agreements calling for performance of work which is subject to the organizational conflict of interest restrictions identified in this clause, unless excused in writing by the Contracting Officer.

(End of clause)

1352.209–72 Restrictions against disclosure.

As prescribed in 48 CFR 1309.507–2(b), insert the following clause:

RESTRICTIONS AGAINST DISCLOSURE (DATE)

(a) The contractor agrees, in the performance of this contract, to keep the information furnished by the Government or acquired/developed by the contractor in performance of the contract and designated by the Contracting Officer or Contracting Officer's Representative, in the strictest confidence. The contractor also agrees not to publish or otherwise divulge such information, in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the contractor's possession, to those employees needing such information to perform the work described herein, *i.e.*, on a "need to know" basis. The contractor agrees to immediately notify the Contracting Officer in writing in the event that the contractor determines or has reason to suspect a breach of this requirement has occurred.

(b) The contractor agrees that it will not disclose any information described in subsection (a) to any person unless prior written approval is obtained from the Contracting Officer. The contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of clause)

1352.209–73 Compliance with the laws.

As prescribed in 48 CFR 1309.507–2(c), insert the following clause:

COMPLIANCE WITH THE LAWS (DATE)

The contractor shall comply with all applicable laws, rules and regulations which deal with or relate to performance in accord with the terms of the contract.

(End of clause)

1352.209–74 Organizational conflict of interest.

As prescribed in 48 CFR 1309.507–2(d), insert the following clause:

ORGANIZATIONAL CONFLICT OF INTEREST (DATE)

(a) *Purpose.* The purpose of this clause is to ensure that the contractor and its subcontractors:

(1) Are not biased because of their financial, contractual, organizational, or other interests which relate to the work under this contract, and

(2) Do not obtain any unfair competitive advantage over other parties by virtue of their performance of this contract.

(b) *Scope.* The restrictions described herein shall apply to performance or participation by the contractor, its parents, affiliates, divisions and subsidiaries, and successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(c) *Warrant and Disclosure.* The warrant and disclosure requirements of this paragraph apply with full force to both the contractor and all subcontractors. The contractor warrants that, to the best of the contractor's knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, and that the contractor has disclosed all relevant information regarding any actual or potential conflict. The contractor agrees it shall make an immediate and full disclosure, in writing, to the Contracting Officer of any potential or actual organizational conflict of interest or the existence of any facts that may cause a reasonably prudent person to question the contractor's impartiality because of the appearance or existence of bias or an unfair competitive advantage. Such disclosure shall include a description of the actions the contractor has taken or proposes to take in order to avoid, neutralize, or mitigate any resulting conflict of interest.

(d) *Remedies.* The Contracting Officer may terminate this contract for convenience, in whole or in part, if the Contracting Officer deems such termination necessary to avoid, neutralize or mitigate an actual or apparent organizational conflict of interest. If the contractor fails to disclose facts pertaining to the existence of a potential or actual organizational conflict of interest or misrepresents relevant information to the Contracting Officer, the Government may terminate the contract for default, suspend or debar the contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(e) *Subcontracts.* The contractor shall include a clause substantially similar to this clause, including paragraphs (f) and (g), in any subcontract or consultant agreement at any tier expected to exceed the simplified acquisition threshold. The terms "contract," "contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

(f) *Prime Contractor Responsibilities.* The contractor shall obtain from its subcontractors or consultants the disclosure required in FAR Part 9.507–1, and shall determine in writing whether the interests disclosed present an actual, or significant potential for, an organizational conflict of interest. The contractor shall identify and avoid, neutralize, or mitigate any subcontractor organizational conflict prior to award of the contract to the satisfaction of the Contracting Officer. If the subcontractor's organizational conflict cannot be avoided, neutralized, or mitigated, the contractor must obtain the written approval of the Contracting Officer prior to entering into the subcontract. If the contractor becomes aware of a subcontractor's potential or actual organizational conflict of interest after contract award, the contractor agrees that the Contractor may be required to eliminate the subcontractor from its team, at the contractor's own risk.

(g) *Waiver.* The parties recognize that this clause has potential effects which will survive the performance of this contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, the contractor may at any time seek a waiver from the Head of the Contracting Activity by submitting such waiver request to the Contracting Officer, including a full written description of the requested waiver and the reasons in support thereof.

(End of clause)

1352.209–75 Title 13 and non-disclosure requirements.

As prescribed in 48 CFR 1309.507–2(e), insert the following clause:

TITLE 13 AND NON-DISCLOSURE REQUIREMENTS (DATE)

The Census Bureau's data are protected by Title 13 of the United States Code. The contractor may not use Title 13 data for any purpose other than the intended purpose for which it is supplied or obtained. All contractor personnel who will have access to Title 13 data must take an oath and complete the Census Bureau Form BC–1759 (Special Sworn Status) that requires nondisclosure of Title 13 data. An authorized Census employee or a Notary Public must administer the oath of nondisclosure.

(End of clause)

1352.213–70 Evaluation utilizing simplified acquisition procedures.

As prescribed in 48 CFR 1313.106–2–70, insert the following provision:

EVALUATION UTILIZING SIMPLIFIED ACQUISITION PROCEDURES (DATE)

The Government will issue an order resulting from this request for quotation to the responsible offeror whose quotation results in the best value to the Government, considering both price and non-price factors. The following factors will be used to evaluate quotations:

[This section is to be tailored to conform to individual procurements. Text is provided as an example only. Stating relative importance of the evaluation factors is not required.]

(1) Personnel Qualifications. The experience, education, and qualifications of personnel proposed to work on the contract will be evaluated to determine their ability to perform their proposed duties.

(2) Technical Approach and Capability. The offeror's approach to performing contract requirements and its capability to successfully perform the contract will be evaluated.

(3) Past Performance. The offeror's past performance on related contracts will be evaluated to determine, as appropriate, successful performance of contract requirements, quality and timeliness of delivery of goods and services, cost management, communications between contracting parties, proactive management and customer satisfaction.

(4) Price.

(End of clause)

1352.213–71 Instructions for submitting quotations under the simplified acquisition threshold—non-commercial.

As prescribed in 48 CFR 1313.302–1–70, insert the following provision:

INSTRUCTIONS FOR SUBMITTING QUOTATIONS UNDER THE SIMPLIFIED ACQUISITION THRESHOLD—NON-COMMERCIAL (DATE)

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition is _____.

(b) *Submission of quotations.* Submit quotations to the office specified in this solicitation at or before the exact time specified in this solicitation. At a minimum, quotations must show—

(1) The solicitation number;

(2) The name, address, and telephone number of the offeror;

(3) Acknowledgment of solicitation amendments;

(4) A technical description showing that the offeror can supply the requirements in the specifications or statement of work in sufficient detail to allow the Government to evaluate the quotation in accordance with the evaluation factors stated in the solicitation.

(5) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and reference information (including contract numbers, points of contact with telephone numbers and other relevant information).

(6) Price and any supporting details for the price, as requested in the solicitation.

(c) Offerors are responsible for submitting quotations, and any modifications thereto, so as to reach the Government office designated in the solicitation by the time specified. The offeror's initial quotation should contain the offeror's best terms from a price and technical standpoint. The Government may reject any or all quotations if such action is in the public interest; accept other than the lowest quotation; and waive informalities and minor irregularities in quotations received.

(End of clause)

1352.215–70 Proposal preparation.

As prescribed in 48 CFR 1315.204–570(a)(1), insert the following provision, tailored as applicable:

PROPOSAL PREPARATION (DATE)

(a) General Instructions. Proposals are expected to conform to solicitation provisions and be prepared in accordance with this section. To aid in evaluation, the proposal shall be clearly and concisely written, neatly presented, indexed (cross-indexed as appropriate), and logically assembled. All pages of each part shall be appropriately numbered and identified with the name of the offeror, the date of the offer, and the solicitation number. Each volume shall be clearly marked by volume number and title.

(b) *Overall Arrangement of Proposal.* (1) VOLUME I—BUSINESS PROPOSAL

(i) Volume I, Business Proposal, consists of the actual offer to enter into a contract to perform the desired work. It also includes required representations, certifications, and acknowledgments, if applicable; justifications for noncompetitive proposed subcontracts; identification of technical data to be withheld; and any other required administrative information.

(ii) Format and Content. Volume I, Business Proposal, shall include the following documents (in the order listed):

(A) Proposal Form:

(*1*) Use of the Form—The Proposal Form (Standard Form 33 or 1449), is to be executed fully and used as the cover sheet (or first page) of Volume I. Include three (3) original signed copies of the form in the original Volume I.

(*2*) Acceptance Period—The acceptance period entered on the Proposal Form by the offeror shall not be less than that prescribed in the solicitation, which shall apply if no other period is offered.

(*3*) Signature Authority—The person signing the Proposal Form must have the authority to commit the offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the Solicitation, to make an award without discussion if it so elects.

(B) Other documentation identified in Section (A) above. The offeror shall submit one original of Volume I, marked as such.

(2) VOLUME II—TECHNICAL PROPOSAL

(i) *General.* (A) Volume II, technical proposal, consists of the offeror's proposal delineating its capabilities and how it intends to perform contract requirements. The Technical proposal will be evaluated in accord with the criteria contained in Section M.

(B) In order that the technical proposal may be evaluated strictly on the merit of the material submitted, no contractual price information is to be included in Volume II. However, the type and quantity of labor and materials is to be included in the Technical Proposal, without any associated cost information.

(C) The technical proposal must be typed, double-spaced, with one inch margins, using elite font, 12 pitch type (or equivalent) and printed, unreduced in size, on 8½″ by 11″ paper, not exceeding ____ pages, single-sided, exclusive of resumes and related corporate experience documentation. Any pages in excess of ____ will be disregarded, and will not be included in the proposal evaluation. Failure of the offeror to comply with the page limitations, resulting in the excess pages not being evaluated, shall not constitute grounds for a protest.

(ii) Format and Content. Volume II, Technical Proposal, shall include the following contents:

(A) Table of Contents

(B) List of Tables and Figures

(C) Summary of Technical Proposal

(D) Technical Proposal

(E) Exceptions and Deviations. These major headings may be subdivided or supplemented by the offeror as appropriate.

(*1*) Summary. This section shall provide a summary that addresses each of the technical evaluation factors set out in Section M.

(*2*) Technical Proposal. The offeror shall clearly address each of the technical evaluation criteria in Section M, and, at a minimum, cover each subfactor.

(*3*) Exceptions and Deviations. This section shall identify and explain any exceptions or

deviations taken to any part of the solicitation or conditional assumptions made with respect to the technical requirements of the solicitation. Offerors should note that taking exceptions to the Government's requirements may indicate an unwillingness or inability to perform the contract, and the proposal may be evaluated as such.

(iii) Specific areas to be addressed:

[This section is to be tailored to conform to the technical evaluation factors. Text is provided as an example. Provide instructions concerning what information is required in order to evaluate proposals in accord with the evaluation factors. Do not request information that is not covered in an evaluation factor.]

Evaluation Factor 1—Technical Approach. Provide information on how the project is to be organized, staffed, and managed that demonstrates the offeror's understanding and effective management of important events or tasks. If applicable, the offeror shall (i) describe the facilities and equipment which will be used in the performance of the contract, and (ii) how the management and coordination of consultant and subcontractor efforts will be accomplished. Fully discuss how the contract requirements will be met and the means used to accomplish them. Merely repeating the contract requirements and stating that they will be accomplished, without discussing how the offeror will accomplish them, is not acceptable.

Evaluation Factor 2—Experience. In a general fashion, describe the offeror's experience and qualifications to perform the contract requirements. Explain how the experience provides confidence that the offeror can perform all contract requirements.

Evaluation Factor 3—Key Personnel. Provide the names, titles, and a description of the duties of those individuals proposed as key personnel to be assigned to the contract. For each key person, submit a resume that provides information concerning their education, background, recent work experience, and accomplishments. Specify the approximate percentage of time each individual will be available for this project, and, if necessary, explain why the key person possesses the qualifications to perform the proposed position.

Evaluation Factor 4—Past Performance. Complete the Past Performance Questionnaire (Attachment X) for all contracts containing requirements similar in scope those in the Statement of Work performed in whole or part over the last ____ years. References can include both Government and commercial contracts and subcontracts.

The offeror shall submit one original of Volume II, marked as such, and _____ copies.

(3) Volume III—Price/cost proposal

(i) Price/Cost proposals must generally adhere to the pricing structure established in Section B, Schedule of Prices. The offeror shall submit one original of Volume III, marked as such, and _____ copies.

[INSERT FOR COST TYPE CONTRACTS:]

(ii) The offeror must also submit the following detailed information to support its proposed costs, as applicable:

(A) Direct Labor: Breakdown of direct labor cost by named person or labor category including number of labor-hours and current actual average hourly rates based on a work year of 2,080 hours. Indicate whether current rates or escalated rates are used. If escalation is included, state the degree (percent) and methodology. Direct labor or levels of effort are to be identified as labor-hours and not as a percentage of an individual's time. Indicate fringe benefit rate, if separate from indirect cost rate.

(B) Other Direct Costs: Specify the amount proposed for duplication/reproduction, meetings and conferences, postage, communication and any other applicable items. Travel, subsistence and local transportation shall be supported with a breakdown, which shall include: number of trips anticipated, number of person days, cost-per-trip-per person, destination(s) proposed, number of person(s) scheduled for travel, mode of transportation, and mileage allowances, if privately-owned vehicles will be used.

(C) Materials: Cost breakdown of materials or equipment must be supported with the methodology used and vendor quotations supplied as applicable.

(D) Consultants: If consultants are proposed, state the total estimated price of the services to be required and the consultant's quoted daily or hourly rate. Include Consulting Agreements entered into between consultant(s) and the offeror, or invoices submitted by consultant(s) for similar services previously provided to the offeror.

(E) Subcontracts: If proposed, cost information for each subcontractor shall be furnished in the same format and level of detail as prescribed for the prime offeror. Additionally, in relation to such subcontracts, the offeror shall submit the following information:

(*1*) A description of the items to be furnished by the subcontractor;

(*2*) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the extent of competition;

(*3*) The proposed subcontract price and cost detail and performance/delivery schedule; and

(*4*) Identification of the type of subcontract to be used.

(F) Indirect Rates: Offerors lacking Government-approved indirect cost rates must provide detailed background data indicating the cost elements included in the applicable pool and a statement that such treatment is in accordance with the company's established accounting practice. Offerors with established rate agreements with cognizant Federal agencies shall submit one copy of such agreements.

(G) Profit: Specify the profit proposed and the rationale justifying the amount of profit.

[INSERT FOR FIXED-PRICE TYPE CONTRACTS:]

(iii) Each offeror's price proposal must be based on the offeror's own technical proposal, the Government's specifications, and other contractual requirements. If the prices to be used are based on a published price list or catalog, the offeror shall so state, and provide a copy of the document with its price proposal. If the prices are to be based on established market prices, not otherwise published, or are prices applicable only to the proposed contract, the offeror shall so state.

(iv) The Government expects that this contract will be awarded based upon adequate price competition. However, in order to determine that offered prices are fair and reasonable, the Government reserves the right to request that the offeror to provide cost breakdowns to support proposed prices. Information to support unit prices should include, but not be limited to, the following:

(A) Salary/wage information with associated payroll expenses, for personnel to be used in performance of the contract;

(B) Cost for equipment, supplies, and consumable materials;

(C) A breakout of related support costs, such as equipment maintenance, rental, transportation, *etc.*;

(D) Overhead costs;

(E) General Administrative expenses; and

(F) Profit

(End of clause)

1352.215–71 Instructions for oral presentations.

As prescribed in 48 CFR 1315.204–570(a)(2), insert the following provision:

INSTRUCTIONS FOR ORAL PRESENTATIONS (DATE)

The Government intends to conduct oral presentations with the offerors in the competitive range as part of the evaluation process.

Oral presentations will be conducted at the following location:

[INSERT LOCATION]

The Contracting Officer will determine the order of oral presentations and the schedule. The Contracting Officer will contact each offeror to schedule the date and time for oral presentations and provide detailed instructions. Once a presentation date and time are confirmed, rescheduling is at the discretion of the Contracting Officer.

(End of clause)

1352.215–72 Inquiries.

As prescribed in 48 CFR 1315.204–570(a)(3), insert the following provision:

INQUIRIES (DATE)

Offerors must submit all questions concerning this solicitation in writing to ____. Questions should be received no later than ____ calendar days after the issuance date of this solicitation. Any responses to questions will be made in writing, without identification of the questioner, and will be included in an amendment to the solicitation. Even if provided in other form, only the question responses included in the amendment to the solicitation will govern performance of the contract.

(End of clause)

1352.215–73 Evaluation quantities—indefinite quantity contract.

As prescribed in 48 CFR 1315.204–570(b)(1), insert the following provision:

EVALUATION QUANTITIES—INDEFINITE QUANTITY CONTRACT (DATE)

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation (and add to this amount other direct costs, if applicable).

(End of clause)

1352.215–74 Best value evaluation.

As prescribed in 48 CFR 1315.204–570(b)(2), insert the following provision:

BEST VALUE EVALUATION (DATE)

(a) Award will be made to the offeror: whose offer conforms to the solicitation requirements; who is determined responsible in accordance with FAR Subpart 9.1 by possessing the financial and other capabilities to fulfill the requirements of the contract; and whose proposal is judged, by an integrated assessment of price/cost and non-price evaluation factors, to provide the best value to the Government in accordance with CAR 1352.215–75, *Evaluation Criteria.*

(b) The Government intends to award [specify "a single contract" or "multiple contracts"] in response to the solicitation. The Government reserves the right not to award a contract depending on the quality of the proposals submitted and the availability of funds.

(c) Evaluation of Proposals.

(1) Initial Evaluation of Proposals. All offers received will be evaluated in accordance with the stated evaluation factors. The Government reserves the right to make an award without discussions based solely upon initial proposals. Therefore, offerors should ensure that their initial proposal constitutes their best offer in terms of both price and the technical solution being proposed.

If award is not made upon initial proposals, then the Contracting Officer will establish a competitive range comprised of the most highly rated proposals. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly-rated proposals. Only those offerors in the competitive range will be offered an opportunity to participate further in the procurement.

(2) Discussions/Final Proposal Revisions. The Contracting Officer will engage in discussions with all offerors in the competitive range in accordance with FAR 15.306. At the conclusion of discussions, a final common cut-off date for submission of final proposal revisions will be established. Those offerors remaining in the competitive range will be notified to submit Final Proposal Revisions.

(3) Final Evaluation of Offers. A final proposal evaluation will be performed after receipt of Final Proposal Revisions.

(End of clause)

1352.215–75 Evaluation criteria.

As prescribed in 48 CFR 1315.204–570(b)(2) and (3), insert the following provision:

EVALUATION CRITERIA (DATE)

[This section is to be tailored to conform to individual procurements. Text is provided as an example only.]

In determining which proposal provides the best value to the Government, non-price (technical) evaluation factors are [significantly more important/somewhat more important/approximately equal in importance/somewhat less important/significantly less important] than evaluated price.

[Insert relative importance among the technical evaluation factors.]

Based upon the results of the integrated assessment of the technical and cost/price proposals, the Government may make an award to other than the lowest-priced offeror or the offeror with the highest technical score if the source selection official determines that to do so would result in the best value to the Government.

(a) Technical Evaluation Factors.

Factor 1—TECHNICAL APPROACH. The proposal will be evaluated on how the offeror intends to organize, staff and manage the contract and the means that will be used to accomplish the contract requirements. The degree to which the proposal demonstrates an understanding of the requirements will be evaluated, as well as the offeror's planned management of consultants and subcontractors, if applicable.

Factor 2—EXPERIENCE. The offeror's background, experience, and qualifications will be assessed to determine the likelihood that that offeror can successfully perform the contract requirements and the degree of the risk of non-performance.

Factor 3—KEY PERSONNEL. The education, experience, and accomplishments of key personnel will be evaluated to determine the degree to which they possess the qualifications to perform their proposed duties under the contract.

Factor 4—PAST PERFORMANCE. The offeror's past performance on related contracts will be evaluated to determine, as appropriate, successful performance of contract requirements, quality and timeliness of delivery of goods and services, effective management of subcontractors, cost management, level of communication between the contracting parties, proactive management and customer satisfaction.

The Government reserves the right to assess the past performance of proposed subcontractors.

The Government will use its discretion to determine the sources of past performance information used in the evaluation, and the information may be obtained from references provided by the offeror, the agency's knowledge of contractor performance, other government agencies or commercial entities, or past performance databases.

If an offeror does not have a history of relevant contract experience, or if past performance information is not available, the offeror will receive a neutral past performance rating; however, an offeror without a history of relevant experience may receive a lowered rating for the experience evaluation factor.

(b) Cost/Price Evaluation.

(1) The proposed prices/costs will be evaluated but not scored. The cost evaluation will determine whether the proposed costs are realistic, complete, and reasonable in relation to the solicitation requirements. Proposed costs must be entirely compatible with the technical proposal.

(2) The Government may use the results of cost/price realism analysis to adjust the offeror's proposal to a most probable cost to the Government. The analysis may include information from a government auditing agency, Government technical personnel, and other sources.

(End of clause)

1352.215–76 Cost or pricing data.

As prescribed in 48 CFR 1315.204–570(b)(4), insert the following provision:

COST OR PRICING DATA

Additional Instructions for Preparation of Cost/Price Proposals

(a) *General.* In addition to the information required by CAR 1352.215–70, the cost/price proposal must contain an explanation of the offeror's and proposed subcontractors' fully burdened rates, including direct salary rates, overhead rates, and profit; and information regarding other direct costs.

(b) *Specific Requirements.* (1) Direct Salary Rates: The offeror shall list the categories of professional or technical personnel required to perform the Statement of Work. A brief definition of the education and experience requirements which qualify an employee for inclusion in a listed category should be provided. Further, if some proposed labor categories are classified by multiple grades within a given discipline (*e.g.*, Architect I and II, or Senior and Junior Engineer), a brief explanation as to how they are differentiated shall be provided.

(2) The offeror, and major subcontractors, should provide individual rates for key personnel. Designation of an individual as a key person is subject to agreement of the parties. Where no key personnel are listed, category average rates are appropriate. Rates should be provided by year for the life of the contract. If rates are escalated, the degree (percent) and methodology must be shown. Escalation increases should reflect recent experience or established personnel policy. Types of salary increases given—merit, cost of living, *etc.*—should be discussed.

(3) Overhead Costs. Generally, the offeror's accounting system and estimating practices will determine the method used to allocate overhead costs. The offeror's established practices, if in accordance with generally accepted accounting principles, will be accepted. Proposed overhead rates should represent the offeror's best estimate of the rates to be experienced during the contract period as projected by company budgets or by recent experience adjusted for factors which will influence trends. A narrative statement outlining the offeror's policies and practices for accumulating overhead costs and the method used to compute the

proposed rate or rates is required. In the case of multi-branch firms, joint ventures or affiliates, it is expected that overhead costs applicable to the specific location(s) where work is to be performed will be proposed. Company-wide, joint venture, or affiliate rate averages may not be appropriate. The rates should be tailored to the work location(s).

(4) Profit. (i) A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the total estimated cost. Rather, profit should be established as a percentage/dollar amount after considering such factors as:

(A) Degree of risk;

(B) Nature of the work to be performed;

(C) Joint venture responsibilities;

(D) Extent of offeror's investment;

(E) Subcontracting of work; and

(F) Other criteria discussed in FAR 15.404–4.

(ii) Separate percentage rates for profit are also required for major subcontractors.

(5) Markup. The offeror may request a markup on subcontract labor. If it does so, it should state the percentage and provide a justification for that figure.

(6) Other Direct Costs. The offeror shall briefly describe the following:

(i) Travel/Subsistence costs;

(ii) Subcontractor costs; and

(iii) How subcontracting costs were analyzed.

(c) Audit Reports. If the offeror or any subcontractor has been audited by a Government agency within the last two years, or has approved indirect cost rates, provide a copy of the audit report, or, if not available, the name, address, and telephone number of the audit office. Similarly, information on any Government-approved indirect cost rates should be provided.

(End of clause)

1352.216–70 Estimated and allowable costs.

As prescribed in 48 CFR 1316.307(a), insert the following clause:

ESTIMATED AND ALLOWABLE COSTS (DATE)

(a) Estimated Costs. The estimated cost of this contract is $_____ [insert total cost of contract], which consists of $_____ [insert amount of cost that is reimbursable] for reimbursable costs and $_____ [insert amount of fixed fee] for fixed/incentive fee. These costs shall be subject to the provisions of FAR clause 52.232–20, "Limitation of Cost," FAR clause 52.216–7, "Allowable Cost and Payments," and FAR clause 52.216–8, "Fixed Fee."

(b) Subject to Availability of Funds [Insert paragraph (b) when the contract is issued subject to the availability of funds].

"The amount of funding for this contract is $_____ [insert amount being funded], which consists of $_____ [insert amount of reimbursable costs funded] for reimbursable costs and $ _____ [insert amount of fixed fee funded] for Fixed/Incentive Fee. These costs shall be subject to the provisions of FAR 52.232–22, "Limitations of Funds.""

(c) Allowable Costs.

(1) Final annual indirect cost rate(s) and the appropriate base(s) shall be established in accordance with FAR Subpart 42.7, in effect for the period covered by the indirect cost rate proposal.

(2) Until final annual indirect cost rates are established for any period, the Government shall reimburse the contractor at billing rates established by the Contracting Officer (or cognizant Federal agency official) or auditor in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows:

_____ [Insert billing rate]

(End of clause)

1352.216–71 Level of effort (cost-plus-fixed-fee, term contract).

As prescribed in 48 CFR 1316.307(b), insert the following clause:

LEVEL OF EFFORT (COST-PLUS-FIXED-FEE, TERM CONTRACT) (DATE)

(a) In performance of the effort directed in this contract, the contractor shall provide the total of Direct Productive Labor Hours (DPLH) as specified in Part I, Section B during the term specified in Section _____. DPLH is defined as actual work hours exclusive of vacation, holidays, sick leave, and other absences.

(b) Only the DPLH categories indicated below shall be charged directly to the contract. It is estimated that the DPLH will be expended approximately as follows:

Labor category	Base period	Option period I	Option period II	Option period III
xxxxxxxxxx	xxxx	xxxx	xxxx	xxxx
xxxxxxxxxx	xxxx	xxxx	xxxx	xxxx
Total Direct Labor	xxxx	xxxx	xxxx	xxxx

(c) The hours specified above are provided as estimates only. If the actual amount of hours incurred falls within 90% to 110% of this estimate, the fee shall not be adjusted.

(d) In the event that the contractor shall be required to provide less than 90% of the estimated DPLH, the fixed fee of the contract shall be equitably adjusted by unilateral modification to the contract. The fixed fee adjustment shall be based solely upon the difference between the DPLH actually provided and 90% of the estimated DPLH, calculated as follows:

Adjusted Fixed Fee = (Actual DPLH/(.9 × Estimated DPLH)) × Specified Fixed Fee

(e) In the event that the contractor shall be required to provide more than 110% of the estimated DPLH, the fixed fee of the Contract shall be equitably adjusted by unilateral modification to the Contract. The fixed fee adjustment shall be based solely upon the difference between the DPLH actually provided and 110% of the estimated DPLH, calculated as follows:

Adjusted Fixed Fee = (Actual DPLH/(1.1 × Estimated DPLH)) × Specified Fixed Fee

(f) These terms and conditions do not supersede the requirements of either FAR clause 52.232–20 "Limitation of Cost" or FAR clause 52.232–22 "Limitation of Funds."

(End of clause)

1352.216–72 Determination of award fee.

As prescribed in 48 CFR 1316.405–2, insert the following clause:

DETERMINATION OF AWARD FEE (DATE)

Based upon the quality of its performance and the results of the Government's performance evaluation, the contractor may earn an award fee.

(a) The total amount of award fee available under this contract is assigned according to the following:

[Insert appropriate information]

(b) A Performance Evaluation Plan shall be unilaterally established by the Government as part of the contract and used for the determination of award fees. This plan shall include the criteria that will be used to evaluate the contractor's performance and to determine the percentage of award fee (if any) available for each performance period.

(c) The criteria contained within the Performance Evaluation Plan may relate to:

(1) Quality of performance of the contract requirements;

(2) Effective management of the contract; and

(3) Cost controls.

(d) The Performance Evaluation Plan may be revised unilaterally by the Government at any time during the period of performance, however unless mutually-agreed to a revision shall not affect the current evaluation period. Notification of such changes shall be provided to the contractor [insert number] calendar days prior to the start of the evaluation period to which the change will apply.

(e) At the conclusion of each evaluation period, and in accordance with the performance evaluation plan, a determination of the amount of the award fee earned shall be made in writing to the contractor by the Government Fee Determination Official (FDO). The FDO's unilateral determination of the amount of award fee earned in any evaluation period or a determination that no fee was earned shall be conclusive.

(f) The contractor may submit a self-evaluation of its performance in an evaluation period. The FDO shall consider

the self-evaluation, as the FDO deems appropriate.

(g) The contractor shall submit a voucher for payment of any earned award fee.

(End of clause)

1352.216–73 Distribution of award fee.

As prescribed in 48 CFR 1316.406, insert the following clause:

DISTRIBUTION OF AWARD FEE (DATE)

(a) The total amount of award fee available under this contract is assigned according to the following:

[Insert appropriate information]

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee.

(c) In the event of contract termination for convenience, either in whole or in part, the amount of award fee available shall represent a prorated distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon submission by the contractor to the Contracting Officer's authorized representative of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without executing a contract modification.

(End of clause)

1352.216–74 Task orders.

As prescribed in 48 CFR 1316.501–2–70, insert the following clause:

TASK ORDERS (DATE)

(a) In task order contracts, all work shall be initiated only by issuance of fully executed task orders issued by the Contracting Officer. The work to be performed under these orders must be within the scope of the contract. The Government is only liable for labor hours and costs expended under the terms and conditions of this contract to the extent that a fully executed task order has been issued and covers the required work and costs. Charges for any work not authorized shall be disallowed.

(b) For each task order under the contract, the Contracting Office shall send a request for proposal to the contractor(s). The request will contain a detailed description of the tasks to be achieved, a schedule for completion of the task order, and deliverables to be provided by the contractor.

(c) The contractor shall submit a proposal defining the technical approach to be taken to complete the task order, work schedule and proposed cost/price.

(d) After any necessary negotiations, the contractor shall submit a final proposal.

(e) Task orders will be considered fully executed upon signature of the Contracting Officer. The contractor shall begin work on the task order in accordance with the effective date of the order.

(f) The contractor shall notify the Contracting Officer of any instructions or guidance given that may impact the cost, schedule or deliverables of the task order. A formal modification to the task order must be issued by the Contracting Officer before any changes can be made.

(g) Task orders may be placed during the period of performance of the contract. Labor rates applicable to hours expended in performance of an order will be the contract rates that are in effect at the time the task order is issued.

(h) If multiple awards are made by the Government, the CO shall provide each awardee a fair opportunity to be considered for each task order over the micro-purchase threshold unless one of the exceptions at FAR 16.505(b) applies.

(End of Clause)

1352.216–75 Minimum and maximum contract amounts.

As prescribed in 48 CFR 1316.506(a), insert the following clause:

MINIMUM AND MAXIMUM CONTRACT AMOUNTS (DATE)

During the term of the contract, the Government shall place orders totaling a minimum of _____. The amount of all orders shall not exceed _____.

(End of clause)

1352.216–76 Placement of orders.

As prescribed in 48 CFR 1316.506(b), insert the following clause:

PLACEMENT OF ORDERS (DATE)

(a) The contractor shall provide goods and/or services under this contract only as directed in orders issued by authorized individuals. In accordance with FAR 16.505, each order will include:

(1) Date of order;

(2) Contract number and order number;

(3) Item number and description, quantity, and unit price or estimated cost or fee;

(4) Delivery or performance date;

(5) Place of delivery or performance (including consignee);

(6) Packaging, packing, and shipping instructions, if any;

(7) Accounting and appropriation data;

(8) Method of payment and payment office, if not specified in the contract;

(9) Any other pertinent information.

(b) In accordance with FAR 52.216–18, *Ordering*, the following individuals (or activities) are authorized to place orders against this contract:

_____

_____

(c) If multiple awards have been made, the contact information for the DOC task and delivery order ombudsman is _____.

(End of clause)

1352.216–77 Ceiling price.

As prescribed in 48 CFR 1316.601–70 and 1316.602–70, insert the following clause:

CEILING PRICE (DATE)

The ceiling price of this contract is $_____. The contractor shall not make expenditures nor incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the contractor's own risk.

(End of clause)

1352.219–70 Section 8(a) direct award (Deviation).

As prescribed in 48 CFR 1319.811–3(a), insert the following clause:

SECTION 8(A) DIRECT AWARD (DEVIATION) (DATE)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to a Partnership Agreement between the Small Business Administration (SBA) and the Department of Commerce (DOC). Accordingly, the SBA, even if not identified in Section A of this contract, is the prime contractor and retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

_____

_____

_____

[To be completed by the Contracting Officer at time of award]

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any novation agreement. The contracting activity may assign contract administration functions to a contract administration office.

(c) The 8(a) contractor agrees:

(1) To notify the Contracting Officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement prior to the actual relinquishing of ownership or control; and

(2) To adhere to the requirements of FAR 52.219–14, Limitations on Subcontracting.

(End of Clause)]

1352.219–71 Notification to delay performance (Deviation).

As prescribed in 48 CFR 1319.811–3(b), insert the following clause:

NOTIFICATION TO DELAY PERFORMANCE (DEVIATION) (DATE)

The contractor shall not begin performance under this purchase order until 2 working days have passed from the date of its receipt. Unless the contractor receives notification from the Small Business Administration that it is ineligible for this 8(a) award, or otherwise receives instructions from the Contracting Officer, performance under this purchase order may begin on the third working day following receipt of the purchase order. If a determination of ineligibility is issued within the 2-day period, the purchase order shall be considered cancelled.

(End of clause)

1352.219–72 Notification of competition limited to eligible 8(a) concerns, Alternate III (Deviation).

As prescribed in 48 CFR 1319.811–3 (c), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) CONCERNS, ALTERNATE III (DEVIATION) (DATE)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offers—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation shall be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) _____ [*insert name of contractor*] will notify the _____ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

1352.227–70 Rights in data, assignment of copyright.

As prescribed in 48 CFR 1327.404–4(a), insert the following clause:

RIGHTS IN DATA, ASSIGNMENT OF COPYRIGHT (DATE)

In accordance with 48 CFR 52.227–17, Rights in Data—Special Works, the contractor agrees to assign copyright to data, including reports and other copyrightable materials, first produced in performance of this contract to the United States Government, as represented by the Secretary of Commerce.

(End of clause)

1352.228–70 Insurance coverage.

As prescribed in 48 CFR 1328.310–70(a), insert the following clause:

INSURANCE COVERAGE (DATE)

(a) *Workers Compensation and Employer's Liability.* The contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least $100,000 shall be required, except in states with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) *General liability.* (1) The contractor shall have bodily injury liability insurance coverage written on the comprehensive form of policy of at least $500,000 per occurrence.

(2) When special circumstances apply in accordance with FAR 28.307–2(b), Property Damage Liability Insurance shall be required in the amount of $_____ [insert zero unless special circumstances apply, if applicable, insert dollar amount.].

(c) *Automobile liability.* The contractor shall have automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage.

(d) *Aircraft public and passenger liability.* When aircraft are used in connection with performing the contract, the contractor shall have aircraft public and passenger liability insurance. Coverage shall be at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(e) *Vessel liability.* When contract performance involves use of vessels, the Contractor shall provide, vessel collision liability and protection and indemnity liability insurance as determined by the Government.

(End of clause)

1352.228–71 Deductibles under required insurance coverage—cost reimbursement.

As prescribed in 48 CFR 1328.310–70(c), insert the following clause:

DEDUCTIBLES UNDER REQUIRED INSURANCE COVERAGE—COST REIMBURSEMENT (DATE)

(a) The contractor is required to present evidence of the amount of any deductibles in its insurance coverage.

(b) For any insurance required pursuant to *1352.228–70, Insurance Coverage,* the contractor's deductible is not allowable as a direct or indirect cost under this contract. The Government is not liable, and cannot be invoiced, for any losses up to the minimum amounts of coverage required in paragraphs (a) through (d) of clause 1352.228–70. If the contractor obtains an insurance policy with deductibles, the contractor, and not the Government, is responsible for any deductible amount up to the minimum amounts of coverage stated.

(c) If the contractor fails to follow all procedures stated in this subsection and in FAR 52.228–7(g), any amounts above the amount of the obtained insurance coverage which are not covered by insurance will not be reimbursable under the contract.

(End of clause)

1352.228–72 Deductibles under required insurance coverage—fixed price.

As prescribed in 48 CFR 1328.310–70(d), insert the following clause:

DEDUCTIBLES UNDER REQUIRED INSURANCE COVERAGE—FIXED PRICE (DATE)

When the Government is injured, wholly or partially as a result of the contractor's actions and such actions are covered by the insurance required by *1352.228–70, Insurance Coverage,* the Government is entitled to recover from the contractor the full amount of any such injury attributable to the contractor regardless of a deductible. The Contracting Officer may offset the amount of recovery against any payment due to the contractor.

(End of clause)

1352.228–73 Loss of or damage to leased aircraft

As prescribed in 48 CFR 1328.310–70(e) and 1328.310–70(f), insert the following clause:

LOSS OF OR DAMAGE TO LEASED AIRCRAFT (DATE)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the contractor a sum equal to the

fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228–74, *Fair Market Value of Aircraft*, less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the contractor against third parties for such loss or damage and the contractor shall promptly assign such rights in writing to the Government.

(End of clause)

1352.228–74 Fair market value of aircraft.

As prescribed in 48 CFR 1328.310–70(e) and 48 CFR 1328.310–70(g) insert the following in all applicable contracts for leased aircraft:

FAIR MARKET VALUE OF AIRCRAFT (DATE)

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft," it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) of this clause:

(a) $ _____; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage is the maximum amount for which the Government may be responsible under this contract.

(End of clause)

1352.228–75 Risk and indemnities.

As prescribed in 48 CFR 1328.310–70(e) and 48 CFR 1328.310–70(h), insert the following in all applicable contracts for leased aircraft:

RISK AND INDEMNITIES (DATE)

The contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

1352.228–76 Approval of group insurance plans.

As prescribed in 48 CFR 1328.310–70(i), insert the following clause:

APPROVAL OF GROUP INSURANCE PLANS (DATE)

Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan for approval to the Contracting Officer. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government shall require similar approval.

(End of clause)

352.231–70 Precontract costs.

As prescribed in 48 CFR 1331.205–32, insert the following clause:

PRECONTRACT COSTS (DATE)

The contractor is entitled to reimbursement for allowable, allocable, and reasonable costs incurred during the period of _____ to the award date of this contract in an amount not to exceed $_____.

(End of clause)

1352.231–71 Duplication of effort.

As prescribed in 48 CFR 1331.205–70, insert the following clause:

DUPLICATION OF EFFORT (DATE)

The contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source. The contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the contractor, whose responsibility it will be to account for it accordingly.

(End of clause)

1352.233–70 Agency protests.

As prescribed in 48 CFR 1333.103(a), insert the following provision:

AGENCY PROTESTS (DATE)

(a) An agency protest may be filed with either: (1) The contracting officer, or (2) at a level above the contracting officer, with the appropriate agency Protest Decision Authority. *See* 64 FR 16,651 (April 6, 1999).

(b) Agency protests filed with the Contracting Officer shall be sent to the following address: [Insert Contracting Officer name and Address]

(c) Agency protests filed with the agency Protest Decision Authority shall be sent to the following address: [Insert appropriate Protest Decision Authority name and Address]

(d) A complete copy of all agency protests, including all attachments, shall be served upon the Contract Law Division of the Office of the General Counsel within one day of filing a protest with either the Contracting Officer or the Protest Decision Authority.

(e) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. FAX: (202) 482–5858.

(End of clause)

1352.233–71 GAO and Court of Federal Claims protests.

As prescribed in 48 CFR 1333.104–70(a), insert the following provision:

GAO AND COURT OF FEDERAL CLAIMS PROTESTS (DATE)

(a) A protest may be filed with either the Government Accountability Office (GAO) or the Court of Federal Claims unless an agency protest has been filed.

(b) A complete copy of all GAO or Court of Federal Claims protests, including all attachments, shall be served upon (i) the Contracting Officer, and (ii) the Contract Law Division of the Office of the General Counsel, within one day of filing a protest with either GAO or the Court of Federal Claims.

(c) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. FAX: (202) 482–5858.

(End of clause)

1352.235–70 Protection of human subjects.

As prescribed in 48 CFR 1335.006(a), insert the following provision:

PROTECTION OF HUMAN SUBJECTS (DATE)

(a) Research involving human subjects is not permitted under this award unless expressly authorized in writing by the Contracting Officer. Such authorization will specify the details of the approved research involving human subjects and will be incorporated by reference into this contract.

(b) The Federal Policy for the Protection of Human Subjects (the "Common Rule"), adopted by the Department of Commerce at 15 CFR Part 27, requires contractors to maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a

"human subject" as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term "research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. The Common Rule also sets forth categories of research that may be considered exempt from 15 CFR Part 27. These categories may be found at 15 CFR 27.101(b).

(c) In the event the human subjects research involves pregnant women, prisoners, or children, the contractor is also required to follow the guidelines set forth at 45 CFR Part 46 Subpart B, C and D, as appropriate, for the protection of members of a protected class.

(d) Should research involving human subjects be included in the proposal, prior to issuance of an award, the contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that contractor has established a relationship with an appropriate Institutional Review Board ("cognizant IRB"). An appropriate IRB is one that is located within the United States and within the community in which the human subjects research will be conducted;

(2) Documentation to verify that the cognizant IRB possesses a valid registration with the United States Department of Health and Human Services' Office for Human Research Protections ("OHRP");

(3) Documentation to verify that contractor has a valid Federal-wide Assurance (FWA) issued by OHRP.

(e) Prior to starting any research involving human subjects, the contractor shall submit appropriate documentation to the Contracting Officer for institutional review and approval. This documentation may include:

(1) Copies of the human subjects research protocol, all questionnaires, surveys, advertisements, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the human subjects research protocol, questionnaires, surveys, advertisements, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule [*Note:* this option is not available for activities that fall under 45 CFR Part 46 Subpart C].

(f) In addition, if the contractor modifies a human subjects research protocol, questionnaire, survey, advertisement, or informed consent form approved by the cognizant IRB, the contractor shall submit a copy of all modified material along with documentation of approval for said modification by the cognizant IRB to the Contracting Officer for institutional review and approval. The contractor shall not implement any IRB approved-modification without written approval by the Contracting Officer.

(g) No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

(End of provision)

1352.235–71 Protection of human subjects—exemption.

As prescribed in 48 CFR 1335.006(b), insert the following clause:

PROTECTION OF HUMAN SUBJECTS (DATE)

(a) Contractor has satisfied the requirements set forth in solicitation #_____, related to the Protection of Human Subjects in research. The Government has determined that the research involving human subjects to be conducted under this contract is exempt from the requirements of the Common Rule for the Protection of Human Subjects. The exemption memorandum executed by the Government and the attachments are hereby incorporated by reference into this contract. If contractor uses an informed consent form for the exempt research, contractor must use the informed consent form contained in the attachments in its conduct of research involving human subjects under this contract.

(b) If the conditions upon which the exemption is based should change in any way, contractor shall immediately notify the Contracting Officer in writing of the specified change. The Government will review the change and make a determination as to whether the change requires a change to the exemption approval. Contractor shall not proceed until notified in writing of the Contracting Officer's approval. Contractor shall obtain prior written approval from the Contracting Officer for any change to the existing human subjects protocol or informed consent form before proceeding.

(c) No other research involving human subjects is permitted under this award unless expressly authorized in writing by the Contracting Officer. Such writing will specify the details of the approved research involving human subjects and will be incorporated by reference into this contract.

(d) The Federal Policy for the Protection of Human Subjects (the "Common Rule"), adopted by the Department of Commerce at 15 CFR Part 27, requires contractors to maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a "human subject" as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term "research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

(e) The Common Rule also sets forth categories of research that may be considered exempt from this policy. These categories may be found at 15 CFR 27.101(b).

(f) In the event the human subjects research involves pregnant women, prisoners, or children, contractor is also required to follow the guidelines set forth at 45 CFR Part 46 Subpart B, C and D, as appropriate, for the protection of members of a protected class.

(g) Should additional research involving human subjects be required under the contract, prior to beginning such research, contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that contractor has established a relationship with an appropriate Institutional Review Board ("cognizant IRB"). An appropriate IRB is one that is located within the United States and within the community in which the human subjects research will be conducted;

(2) Documentation to verify that the cognizant IRB is registered with the United States Department of Health and Human Services' Office for Human Research Protections ("OHRP") and is designated as contractor's cognizant IRB;

(3) Documentation to verify that contractor has a valid Federal-wide Assurance (FWA) issued by OHRP; or

(4) Documentation necessary to support a determination that the research is exempt from the requirements of the Common Rule for the Protection of Human Subjects.

(h) Prior to starting any additional research involving human subjects, the contractor shall submit appropriate documentation to the Contracting Officer for institutional review and approval or exemption determination. This documentation may include:

(1) Copies of the human subjects research protocol, all questionnaires, surveys, advertisements, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the human subjects research protocol, questionnaires, surveys, advertisements, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule [*Note:* this option is not available for activities that fall under 45 CFR Part 46 Subpart C].

(i) In addition, if the contractor modifies a human subjects research protocol, questionnaire, survey, advertisement, or informed consent form approved by the cognizant IRB, the contractor shall submit a copy of all modified material along with documentation of approval for said modification by the cognizant IRB to the Contracting Officer for institutional review and approval. The contractor may not implement any IRB approved modification without written approval by the Contracting Officer.

No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

(End of clause)

1352.235–72 Protection of human subjects—institutional approval.

As prescribed in 48 CFR 1335.006(c), insert the following clause:

PROTECTION OF HUMAN SUBJECTS—INSTITUTIONAL APPROVAL (DATE)

(a) This contract/order includes non-exempt human subjects research that must be conducted pursuant to the requirements of the Federal Policy for the Protection of Human Subjects (the "Common Rule"), adopted by the Department of Commerce at 15 CFR Part 27. Contractor has submitted documentation establishing review and approval of the human subjects research protocol, including all informed consent forms, advertisements, and other recruitment materials, by a qualified Institutional Review Board (IRB) that has a current Federal-wide Assurance (FWA) issued by the Department of Health and Human Services (DHHS).

(b) By accepting this contract/order, the contractor certifies the accuracy of the documentation provided to its cognizant IRB and to the Government in support of the human subjects research specified therein. Based upon the contractor's documentation, and following the Government institutional review thereof, the following specific involvement of human subjects in research is hereby approved by the Contracting Officer:

Name of IRB: _____
(IRB # _____)
Title of IRB Protocol: _____
Recruiting Letter Approval Date (if appropriate): _____
Consent Form Approval Date: _____
Assurance of Compliance Number: _____

(c) Unless incorporated by written contract modification approved by the Contracting Officer, no other involvement of human subjects in research under this contract may be undertaken or conducted, or costs incurred and/or charged to the project, except as specified in the study plan reviewed and approved by the cognizant IRB and Government. Therefore, if the contractor modifies a human subjects research protocol, advertisement, or informed consent form approved by the cognizant IRB, contractor shall submit a copy of all modified material, along with documentation of approval for said modification by the cognizant IRB, to the Contracting Officer for agency institutional review and approval. Contractor may not implement any IRB-approved modification without written approval by the Contracting Officer.

Documentation of continuing IRB approval is required each year by the renewal date assigned by the cognizant IRB. Documentation of continuing IRB approval must be submitted to the Government for review and approval as soon as it occurs. Continuing approval of the human subjects research must be obtained from the cognizant IRB and provided to the Government until the research is completed or terminated. The contractor may proceed with previously approved human subjects research, if any, under this contract while the Government is conducting continuing review and approval of the human subjects research protocol. In the event that the Government determines, during the course of its review, that the human subjects research in this contract is not in compliance with the regulations set forth at 15 CFR Part 27, or this contract, the Contracting Officer may take the appropriate enforcement action, including disallowing costs, suspending or terminating the human subjects protocol or the contract, by notifying the contractor in writing.

(d) It is incumbent upon contractor to ensure that continuing IRB review approval occurs in accordance with 15 CFR Part 27. In the event that continuing review approval does not occur as set forth by 15 CFR Part 27, contractor is to notify the Contracting Officer immediately.

(e) Contractor must report all adverse events to the cognizant IRB and to the Contracting Officer. In the event that adverse events are reported to the cognizant IRB and the Contracting Officer, the Government may suspend this contract pending a full review of the adverse event by the cognizant IRB.

(f) If the conditions upon which IRB approval is based should change in any way, contractor shall immediately notify the Contracting Officer, in writing, of the specified change.

(g) Failure to comply with this contract clause will be considered material noncompliance with the contract, and the Contracting Officer may take appropriate enforcement action, including disallowing costs, suspension or termination of the contract.

(End of clause)

1352.235–73 Research involving human subjects—after initial contract award.

As prescribed in 48 CFR 1335.006(d), insert the following clause:

RESEARCH INVOLVING HUMAN SUBJECTS—AFTER INITIAL CONTRACT AWARD (DATE)

(a) No research involving human subjects is currently included in this contract/task order, and no research involving human subjects is permitted under this contract/task order unless expressly authorized, in writing, by the Contracting Officer.

(b) The Federal Policy for the Protection of Human Subjects (the "Common Rule"), adopted by the Department of Commerce at 15 CFR Part 27, requires that contractors maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a "human subject" as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term "research" means a systematic investigation, including research, development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

(c) The Common Rule also sets forth categories of research that may be considered exempt from this policy. These categories are specified at 15 CFR 27.101(b).

(d) In the event that human subjects research involves pregnant women, prisoners, or children, the contractor is also required to follow the guidelines set forth at 45 CFR Part 46 Subparts B, C and D, as appropriate, for the protection of members of a protected class.

(e) Should research involving human subjects become necessary for carrying out this contract/task order, prior to undertaking or conducting such human subjects research, contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that contractor has established a relationship with an appropriate Institutional Review Board ("cognizant IRB"). An appropriate IRB is one that is located within the United States and within the community in which the human subjects research will be conducted;

(2) Documentation to verify that the cognizant IRB is registered with the United States Department of Health and Human Services' Office for Human Research Protections ("OHRP");

(3) Documentation to verify that contractor has a valid Federal-wide Assurance (FWA) issued by the OHRP.

(f) Prior to starting any research involving human subjects, contractor shall submit appropriate documentation to the Contracting Officer for Government institutional review and approval. This documentation may include:

(1) Copies of the human subjects research protocol, advertisements, recruitment material, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the human subjects research protocol, advertisements, recruitment material, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule [*Note:* this option is not available for activities that fall under 45 CFR Part 46 Subpart C].

(g) In addition, if contractor modifies a human subjects research protocol, advertisement, recruitment material, or informed consent form approved by the cognizant IRB, contractor shall submit a copy of all modified material, along with documentation of approval for said modification by the cognizant IRB, to the Contracting Officer for Agency institutional review and approval. Contractor may not implement any IRB-approved modification without written approval by the Contracting Officer.

(h) No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

(End of clause)

1352.237–70 Security processing requirements—high or moderate risk contracts.

As prescribed in 48 CFR 1337.110–70 (b), insert the following clause:

SECURITY PROCESSING REQUIREMENTS—HIGH OR MODERATE RISK CONTRACTS (DATE)

(a) Investigative Requirements for High and Moderate Risk Contracts. All contractor (and subcontractor) personnel proposed to be employed under a High or Moderate Risk contract shall undergo security processing by the Department's Office of Security before being eligible to work on the premises of any Department of Commerce owned, leased, or controlled facility in the United States or overseas, or to obtain access to a Department of Commerce IT system. All Department of Commerce security processing pertinent to this contract will be conducted at no cost to the contractor. The level of contract risk will determine the type and scope of such processing, as noted below.

(1) Investigative requirements for Non-IT Service Contracts are:

(i) High Risk—Background Investigation (BI).

(ii) Moderate Risk—Moderate Background Investigation (MBI).

(2) Investigative requirements for IT Service Contracts are:

(i) High Risk IT—Background Investigation (BI).

(ii) Moderate Risk IT—Background Investigation (BI).

(b) In addition to the investigations noted above, non-U.S. citizens must have a pre-appointment check that includes an Immigration and Customs Enforcement agency check.

(c) Additional Requirements for Foreign Nationals (Non-U.S. Citizens). To be employed under this contract within the United States, non-U.S. citizens must have:

(1) Official legal status in the United States;

(2) Continuously resided in the United States for the last two years; and

(3) Obtained advance approval from the servicing Security Officer of the contracting operating unit in consultation with the DOC Office of Security (OSY) headquarters. (OSY routinely consults with appropriate agencies regarding the use of non-U.S. citizens on contracts and can provide up-to-date information concerning this matter.)

(d) Security Processing Requirement. Processing requirements for High and Moderate Risk Contracts are as follows:

(1) The contractor must complete and submit the following forms to the Contracting Officer's Representative (COR):

(i) Standard Form 85P (SF–85P), Questionnaire for Public Trust Positions;

(ii) FD–258, Fingerprint Chart with OPM's designation in the ORI Block; and

(iii) Credit Release Authorization.

(2) The Sponsor will ensure that these forms have been properly completed, initiate the CD–254, Contract Security Classification Specification, and forward the documents to the cognizant Security Officer.

(3) Upon completion of security processing, the Office of Security, through the servicing Security Officer and the Sponsor, will notify the contractor in writing of an individual's eligibility to be provided access to a Department of Commerce facility or Department of Commerce IT system.

(4) Security processing shall consist of limited personal background inquiries pertaining to verification of name, physical description, marital status, present and former residences, education, employment history, criminal record, personal references, medical fitness, fingerprint classification, and other pertinent information. For non-U.S. citizens, the Sponsor must request an Immigration and Customs Enforcement agency check. It is the option of the Office of Security to repeat the security processing on any contract employee at its discretion.

(e) Notification of Disqualifying Information. If the Office of Security receives disqualifying information on a contract employee, the COR will be notified. The Sponsor, in coordination with the Contracting Officer, will immediately remove the contract employee from duties requiring access to Departmental facilities or IT systems. Contract employees may be barred from working on the premises of a facility for any of the following:

(1) Conviction of a felony crime of violence or of a misdemeanor involving moral turpitude;

(2) Falsification of information entered on security screening forms or on other documents submitted to the Department;

(3) Improper conduct once performing on the contract, including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government, regardless of whether the conduct was directly related to the contract;

(4) Any behavior judged to pose a potential threat to Departmental information systems, personnel, property, or other assets.

(f) Failure to comply with security processing requirements may result in termination of the contract or removal of contract employees from Department of Commerce facilities or denial of access to IT systems.

(g) Access to National Security Information. Compliance with these requirements shall not be construed as providing a contract employee clearance to have access to national security information.

(h) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–71 Security processing requirements—low risk contracts.

As prescribed in 48 CFR 1337.110–70(c), insert the following clause:

SECURITY PROCESSING REQUIREMENTS—LOW RISK CONTRACTS (DATE)

(a) Investigative Requirements for Low Risk Contracts. All contractor (and subcontractor) personnel proposed to be employed under a Low Risk contract shall undergo security processing by the Department's Office of Security before being eligible to work on the premises of any Department of Commerce owned, leased, or controlled facility in the United States or overseas, or to obtain access to a Department of Commerce IT system. All Department of Commerce security processing pertinent to this contract will be conducted at no cost to the contractor.

(b) Investigative requirements for Non-IT Service Contracts are:

(1) Contracts more than 180 days—National Agency Check and Inquiries (NACI).

(2) Contracts less than 180 days—Special Agency Check (SAC).

(c) Investigative requirements for IT Service Contracts are:

(1) Contracts more than 180 days—National Agency Check and Inquiries (NACI).

(2) Contracts less than 180 days—National Agency Check and Inquiries (NACI).

(d) In addition to the investigations noted above, non-U.S. citizens must have a background check that includes an Immigration and Customs Enforcement agency check.

(e) Additional Requirements for Foreign Nationals (Non-U.S. Citizens). Non-U.S. citizens (lawful permanent residents) to be employed under this contract within the United States must have:

(1) Official legal status in the United States;

(2) Continuously resided in the United States for the last two years; and

(3) Obtained advance approval from the servicing Security Officer in consultation with the Office of Security headquarters.

(f) DOC Security Processing Requirements for Low Risk Non-IT Service Contracts. Processing requirements for Low Risk non-IT Service Contracts are as follows:

(1) Processing of a NACI is required for all contract employees employed in Low Risk non-IT service contracts for more than 180 days. The Contracting Officer's Representative (COR) will invite the prospective contractor into e-QIP to complete the SF–85. The contract employee must also complete fingerprinting.

(2) Contract employees employed in Low Risk non-IT service contracts for less than 180 days require processing of Form OFI–86C Special Agreement Check (SAC), to be processed. The Sponsor will forward a completed Form OFI–86C, FD–258, Fingerprint Chart, and Credit Release Authorization to the servicing Security Officer, who will send the investigative packet to the Office of Personnel Management for processing.

(3) Any contract employee with a favorable SAC who remains on the contract over 180 days will be required to have a NACI conducted to continue working on the job site.

(4) For Low Risk non-IT service contracts, the scope of the SAC will include checks of the Security/Suitability Investigations Index (SII), other agency files (INVA), Defense Clearance Investigations Index (DCII), FBI Fingerprint (FBIF), and the FBI Information Management Division (FBIN).

(5) In addition, for those individuals who are not U.S. citizens (lawful permanent residents), the Sponsor may request a Customs Enforcement SAC on Form OFI–86C, by checking Block #7, Item I. In Block 13, the Sponsor should enter the employee's Alien Registration Receipt Card number to aid in verification.

(6) Copies of the appropriate forms can be obtained from the Sponsor or the Office of Security. Upon receipt of the required forms, the Sponsor will forward the forms to the servicing Security Officer. The Security

Officer will process the forms and advise the Sponsor and the Contracting Officer whether the contract employee can commence work prior to completion of the suitability determination based on the type of work and risk to the facility (*i.e.*, adequate controls and restrictions are in place). The Sponsor will notify the contractor of favorable or unfavorable findings of the suitability determinations. The Contracting Officer will notify the contractor of an approved contract start date.

(g) Security Processing Requirements for Low Risk IT Service Contracts. Processing of a NACI is required for all contract employees employed under Low Risk IT service contracts.

(1) Contract employees employed in all Low Risk IT service contracts will require a National Agency Check and Inquiries (NACI) to be processed. The Contracting Officer's Representative (COR) will invite the prospective contractor into e-QIP to complete the SF–85. Fingerprints and a Credit Release Authorization must be completed within three working days from start of work, and provided to the Servicing Security Officer, who will forward the investigative package to OPM.

(2) For Low Risk IT service contracts, individuals who are not U.S. citizens (lawful permanent residents) must undergo a NACI that includes an agency check conducted by the Immigration and Customs Enforcement Service. The Sponsor must request the ICE check as a part of the NAC.

(h) Notification of Disqualifying Information. If the Office of Security receives disqualifying information on a contract employee, the Sponsor and Contracting Officer will be notified. The Sponsor shall coordinate with the Contracting Officer for the immediate removal of the employee from duty requiring access to Departmental facilities or IT systems. Contract employees may be barred from working on the premises of a facility for any of the following reasons:

(1) Conviction of a felony crime of violence or of a misdemeanor involving moral turpitude.

(2) Falsification of information entered on security screening forms or of other documents submitted to the Department.

(3) Improper conduct once performing on the contract, including criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government regardless of whether the conduct was directly related to the contract.

(4) Any behavior judged to pose a potential threat to Departmental information systems, personnel, property, or other assets.

(i) Failure to comply with security processing requirements may result in termination of the contract or removal of contract employees from Department of Commerce facilities or denial of access to IT systems.

(j) Access to National Security Information. Compliance with these requirements shall not be construed as providing a contract employee clearance to have access to national security information.

(k) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–72 Security processing requirements—national security contracts.

As prescribed in 48 CFR 1337.110–70(d), use the following clause:

SECURITY PROCESSING REQUIREMENTS—NATIONAL SECURITY CONTRACTS (DATE)

(a) Security Investigative Requirements for National Security Contracts. National Security Contracts require contractor employees to gain access to national security information in the performance of their work. Regardless of the contractor employees' location, appropriate security access and fulfillment of cleared facility requirements, as determined by the National Industrial Security Program (NISP) Operation Manual must be met. All contractors are subject to the appropriate investigations indicated below and may be granted appropriate security access by the Office of Security based on favorable results. No national security material or documents shall be removed from a Department of Commerce facility. The circumstances of the work performance must allow the Department of Commerce to retain control over national security information and keep the number of contract personnel with access to the information to a minimum.

(b) All employees working on Special or Critical Sensitive contracts require an updated personnel security background investigation every five (5) years. Employees on Non-Critical Sensitive contracts will require an updated personnel security background investigation every ten (10) years.

(c) Security Procedures. Position sensitivity/risk assessments must be conducted on all functions that are performed under the contract. Risk assessments for contractor employees are determined in the same manner as assessment of those functions performed by government employees. The Contracting Officer and Contracting Officer's Representative should determine the level of sensitivity or risk with the assistance of the servicing Security Officer.

(1) Contractor employees working on National Security Contracts must have a completed investigation and be granted an appropriate security level clearance by the Office of Security before start of work.

(2) The Contracting Officer's Representative must send the contract employee's existing security clearance information, if applicable, or appropriate investigative request package, to the servicing Security Officer, who will review and forward it to the Office of Security.

(3) The Office of Security must confirm that contract employees have the appropriate security clearance before starting any work under a National Security Contract.

(d) Security Forms Required. For Critical-Sensitive positions with Top Secret access, Critical-Sensitive positions with Secret access, and Non-Critical Sensitive positions with Secret or Confidential access, the following forms are required:

(1) Form SF–86, Questionnaire for National Security Positions, marked "CON" in Block 1, Position Title, to distinguish it as a contractor case;

(2) Form FD–258, Fingerprint Chart, with OPM's designation in the ORI Block; and

(3) Credit Release Authorization Form.

(e) Contracting Officer's Representative Responsibilities are:

(1) Coordinate submission of a proper investigative request package with the servicing Security Officer, the Contracting Officer, and the contractor.

(2) Review the request package for completeness, ensuring that the subject of each package is identified as a contract employee, the name of the contractor is identified, and that each package clearly indicates the contract sensitivity designation.

(3) Send the request package to the servicing Security Officer for investigative processing.

(f) Servicing Security Officer Responsibilities are:

(1) Review the package for completeness.

(2) Ensure that the forms are complete and contain all the pertinent information necessary to request the background investigation.

(3) Forward the request for investigation to the Defense Investigative Service Coordinating Office (DISCO).

(4) Maintain records of contractor personnel in their units subject to the NISP.

(5) Ensure that all contractor personnel have been briefed on the appropriate procedures for handling and safeguarding national security information.

(g) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–73 Foreign national visitor and guest access to departmental resources.

As prescribed in 48 CFR 1337.110–70(e), insert the following clause:

FOREIGN NATIONAL VISITOR AND GUEST ACCESS TO DEPARTMENTAL RESOURCES (DATE)

(a) The contractor shall comply with the provisions of Department Administrative Order 207–12, Foreign National Visitor and Guest Access Program; Bureau of Industry and Security Export Administrative Regulations Part 734, and [insert operating unit counsel specific procedures]. The contractor shall provide the Government with notice of foreign nationals requiring access to any Department of Commerce facility or through a Department of Commerce IT system.

(b) The contractor shall identify each foreign national who requires access to any Departmental resources, and shall provide all requested information in writing to the Contracting Officer's Representative.

(c) The contractor shall include the substance of this clause, including this paragraph, in all subcontracts.

(End of clause)

1352.237–74 Progress reports.

As prescribed in 48 CFR 1337.110–71(a), insert the following clause:

PROGRESS REPORTS (DATE)

The contractor shall submit, to the Government, a progress report every _____ [insert time period] month(s) after the effective date of the contract, and every _____ [insert time period] thereafter during the period of performance. The contractor shall deliver progress reports that summarize the work completed during the performance period, the work forecast for the following period, and state the names, titles and number of hours expended for each of the contractor's professional personnel assigned to the contract, including officials of the contractor. The report shall also include any additional information—including findings and recommendations—that may assist the Government in evaluating progress under this contract. The first report shall include a detailed work outline of the project and the contractor's planned phasing of work by reporting period.

(End of clause)

1352.237–75 Key personnel.

As prescribed in 48 CFR 1337.110–71(b), insert the following clause:

KEY PERSONNEL (DATE)

(a) The contractor shall assign to this contract the following key personnel:

(Name) (Position Title)

(Name) (Position Title)

(b) The contractor shall obtain the consent of the Contracting Officer prior to making key personnel substitutions. Replacements for key personnel must possess qualifications equal to or exceeding the qualifications of the personnel being replaced, unless an exception is approved by the Contracting Officer.

(c) Requests for changes in key personnel shall be submitted to the Contracting Officer at least 15 working days prior to making any permanent substitutions. The request should contain a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. The Contracting Officer will notify the contractor within 10 working days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes.

(End of clause)

1352.239–70 Software license addendum.

As prescribed in 48 CFR 1339.107, insert the following clause:

SOFTWARE LICENSE ADDENDUM (DATE)

(a) This Addendum incorporates certain terms and conditions relating to Federal procurement actions. The terms and conditions of this Addendum take precedence over the terms and conditions contained in any license agreement or other contract documents entered into between the parties.

(b) Governing Law: Federal procurement law and regulations, including the Contract Disputes Act, 41 U.S.C. Section 601 *et. seq.*, and the Federal Acquisition Regulation (FAR), govern the agreement between the parties. Litigation arising out of this contract may be filed only in those fora that have jurisdiction over Federal procurement matters.

(c) Attorney's Fees: Attorney's fees are payable by the Federal government in any action arising under this contract only pursuant to the Equal Access in Justice Act, 5 U.S.C. Section 504.

(d) No Indemnification: The Federal government will not be liable for any claim for indemnification; such payments may violate the Anti-Deficiency Act, 31 U.S.C. Section 1341(a).

(e) Assignment: Payments may only be assigned in accordance with the Assignment of Claims Act, 31 U.S.C. Section 3727, and FAR Subpart 32.8, "Assignment of Claims."

(f) Invoices: Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. Section 3903) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment.

(g) Patent and Copyright Infringement: Patent or copyright infringement suits brought against the United States as a party may only be defended by the U.S. Department of Justice (28 U.S.C. Section 516).

(h) Renewal of Support after Expiration of this Award: Service will not automatically renew after expiration of the initial term of this agreement.

(i) Renewal may only occur in accord with (1) the mutual agreement of the parties; or (2) an option renewal clause allowing the Government to unilaterally exercise one or more options to extend the term of the agreement.

(End of clause)

1352.239–71 Electronic and information technology.

As prescribed in 48 CFR 1339.270(a), insert the following provision:

ELECTRONIC AND INFORMATION TECHNOLOGY (DATE)

(a) To be considered eligible for award, offerors must propose electronic and information technology (EIT) that meet the applicable Access Board accessibility standards at 36 CFR 1194 designated below:

_____ 1194.21 Software applications and operating systems

_____ 1194.22 Web-based intranet and internet information and applications

_____ 1194.23 Telecommunications products

_____ 1194.24 Video and multimedia products

_____ 1194.25 Self-contained, closed products

_____ 1194.26 Desktop and portable computers

_____ 1194.31 Functional performance criteria

_____ 1194.41 Information, documentation and support

(b) The standards do not require the installation of specific accessibility-related software or the attachment of an assistive technology device, but merely require that the EIT be compatible with such software and devices so that it can be made accessible if so required by the agency in the future.

(c) Alternatively, offerors may propose products and services that provide equivalent facilitation. Such offers will be considered to have met the provisions of the Access Board standards for the feature or components providing equivalent facilitation. If none of the offers that meet all applicable provisions of the standards could be accepted without imposing an undue burden on the agency or component, or if none of the offerors propose products or services that fully meet all of the applicable Access Board's provisions, those offerors whose products or services meet some of the applicable provisions will be considered eligible for award. Awards will not be made to an offeror meeting all or some of the applicable Access Board provisions if award would impose an undue burden upon the agency.

(d) Offerors must submit representation information concerning their products by completing the VPAT template at *http://www.Section508.gov.*

(End of clause)

1352.239–72 Security requirements for information technology resources.

As prescribed in 48 CFR 1339.270(b), insert the following clause:

SECURITY REQUIREMENTS FOR INFORMATION TECHNOLOGY RESOURCES (DATE)

(a) *Applicability.* This clause is applicable to all contracts that require contractor electronic access to Department of Commerce sensitive non-national security or national security information contained in systems, or administrative control of systems by a contractor that process or store information that directly supports the mission of the Agency.

(b) *Definitions.* For purposes of this clause, the term "Sensitive" is defined by the guidance set forth in the Computer Security Act of 1987 (Pub. L. 100–235), including the following definition of the term:

(1) Sensitive information is " * * * any information, the loss, misuse, or unauthorized access to, or modification of which could adversely affect the national interest or the, conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (The Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy."

(2) For purposes of this clause, the term "National Security" is defined by the guidance set forth in:

(i) The DOC IT Security Program Policy and Minimum Implementation Standards, Section 4.3.

(ii) The DOC Security Manual, Chapter 18.

(iii) Executive Order 12958, as amended, Classified National Security Information.

Classified or national security information is information that has been specifically authorized to be protected from unauthorized disclosure in the interest of national defense or foreign policy under an Executive Order or Act of Congress.

(3) Information technology resources include, but are not limited to, hardware, application software, system software, and information (data). Information technology services include, but are not limited to, the management, operation (including input, processing, transmission, and output), maintenance, programming, and system administration of computer systems, networks, and telecommunications systems.

(c) The contractor shall be responsible for implementing sufficient Information Technology security, to reasonably prevent the compromise of DOC IT resources for all of the contractor's systems that are interconnected with a DOC network or DOC systems that are operated by the contractor.

(d) All contractor personnel performing under this contract and contractor equipment used to process or store DOC data, or to connect to DOC networks, must comply with the requirements contained in the DOC *Information Technology Management Handbook* (*see* DOC, Office of the Chief Information Officer Web site), or equivalent/more specific agency or operating unit counsel guidance as specified immediately hereafter [insert agency or operating unit counsel specific guidance, if applicable].

(e) Contractor personnel requiring a user account for access to systems operated by the contractor for DOC or interconnected to a DOC network to perform contract services shall be screened at an appropriate level in accordance with Commerce Acquisition Manual 1337.70, *Security Processing Requirements for Service Contracts.*

(f) Within 5 days after contract award, the contractor shall certify in writing to the COR that its employees, in performance of the contract, have completed initial IT security orientation training in DOC IT Security policies, procedures, computer ethics, and best practices, in accordance with *DOC IT Security Program Policy*, chapter 15, section 15.3. The COR will inform the contractor of any other available DOC training resources. Annually thereafter the contractor shall certify in writing to the COR that its employees, in performance of the contract, have completed annual refresher training as required by section 15.4 of the *DOC IT Security Program Policy.*

(g) Within 5 days of contract award, the contractor shall provide the COR with signed acknowledgement of the provisions as contained in Commerce Acquisition Regulation (CAR), 1352.209–72, *Restrictions Against Disclosures.*

(h) The contractor shall afford DOC, including the Office of Inspector General, access to the contractor's and subcontractor's facilities, installations, operations, documentation, databases, and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of DOC data or to the function of computer systems operated on behalf of DOC, and to preserve evidence of computer crime.

(i) For all contractor-owned systems for which performance of the contract requires interconnection with a DOC network on which DOC data will be stored or processed, the contractor shall provide, implement, and maintain a System Accreditation Package in accordance with the *DOC IT Security Program Policy.* Specifically, the contractor shall:

(1) Within 14 days after contract award, submit for DOC approval a System Certification Work Plan, including project management information (at a minimum the tasks, resources, and milestones) for the certification effort, in accordance with *DOC IT Security Program Policy* and [Insert agency or operating unit counsel specific guidance, if applicable]. The Certification Work Plan, approved by the COR, in consultation with the DOC IT Security Officer, or Agency/operating unit counsel IT Security Manager/Officer, shall be incorporated as part of the contract and used by the COR to monitor performance of certification activities by the contractor of the system that will process DOC data or connect to DOC networks. Failure to submit and receive approval of the Certification Work Plan may result in termination of the contract.

(2) Upon approval, follow the work plan schedule to complete system certification activities in accordance with DOC *IT Security Program Policy* Section 6.2, and provide the COR with the completed System Security Plan and Certification Documentation Package portions of the System Accreditation Package for approval and system accreditation by an appointed DOC official.

(3) Upon receipt of the Security Assessment Report and Authorizing Official's written accreditation decision from the COR, maintain the approved level of system security as documented in the Security Accreditation Package, and assist the COR in annual assessments of control effectiveness in accordance with DOC *IT Security Program Policy*, Section 6.3.1.1.

(j) The contractor shall incorporate this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

1352.242–70 Postaward conference.

As prescribed in 48 CFR 1342.503–70, insert the following provision:

POSTAWARD CONFERENCE (DATE)

A postaward conference with the successful offeror may be required. If required, the Contracting Officer will contact the contractor within 10 days of contract award to arrange the conference.

(End of clause)

1352.245–70 Government furnished property.

As prescribed in 48 CFR 1345.107–70, insert the following clause:

GOVERNMENT FURNISHED PROPERTY (DATE)

The Government will provide the following item(s) of Government property to the contractor . The contractor shall be accountable for, and have stewardship of, the property in the performance of this contract. This property shall be used and maintained by the contractor in accordance with provisions of the "Government Property" clause included in this contract.

Item No.	Description	Quantity	Delivery date	Property/Tag No. (if applicable)
.....	.....	.....	.....	.....

(End of clause)

1352.246–70 Place of acceptance.

As prescribed in 1346.503, insert the following clause:

PLACE OF ACCEPTANCE (DATE)

(a) The Contracting Officer or the duly authorized representative will accept supplies and services to be provided under this contract.

(b) The place of acceptance will be:

_____

_____

_____

(End of clause)

1352.270–70 Period of performance.

As prescribed in 48 CFR 1370.101, insert the following clause:

PERIOD OF PERFORMANCE (DATE)

(a) The base period of performance of this contract is from _____ through _____. If an option is exercised, the period of performance shall be extended through the end of that option period.

(b) The option periods that may be exercised are as follows:

Period	Start date	End date
Option I	.....	.....
Option II	.....	.....
Option III	.....	.....
Option IV	.....	.....

(c) The notice requirements for unilateral exercise of option periods are set out in FAR 52.217–9.

(End of clause)

1352.270–71 Pre-bid/pre-proposal conference and site visit.

As prescribed in 48 CFR 1370.102, insert the following provision:

PRE-BID/PRE-PROPOSAL CONFERENCE AND SITE VISIT (DATE)

(a) The Government is planning a pre-proposal conference, during which potential contractors may obtain a better understanding of the work required.

(b) Offerors are encouraged to submit all questions in writing at least [____] days prior to the conference. Questions will be considered at any time prior to, or during, the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference, an amendment to the solicitation containing an abstract of the questions and the Government's answers, and a list of attendees, will be made publicly available.

(c) In order to facilitate conference preparations, contact the person identified in [Block __] on Standard Form [__] of this solicitation to make arrangements for security processing for entry of attendees into the Government facility.

(d) In no event shall failure to attend the pre-proposal conference constitute grounds supporting a protest or contract claim.

(e) Offerors are cautioned that, notwithstanding any remarks, clarifications, or responses provided at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by written amendment. It is the responsibility of each offeror, prior to submitting a proposal, to seek clarification of any perceived ambiguity in the solicitation or created by an amendment of the solicitation.

(f) The pre-proposal conference will be held:

Date: _____
Time: _____
Location: _____

[Instructions: If the conference also includes a site or equipment inspection visit, insert the following paragraph]:

(g) During the conference, an opportunity to visit the site of the work, and, if applicable, inspect equipment on which maintenance or repairs are to be performed will be offered to attendees.

(h) Offerors are expected to satisfy themselves regarding all conditions that may affect the work required or the cost of contract performance. In no event shall failure to inspect the site and/or equipment constitute grounds for any protest or contract claim.

(End of clause)

1352.271–70 Inspection and manner of doing work.

As prescribed in 48 CFR 1371.101, insert the following clause:

INSPECTION AND MANNER OF DOING WORK (DATE)

(a) All work and material shall be subject to the approval of the Contracting Officer or duly authorized representative. Work shall be performed in accordance with the plans and specifications of this contract as modified by any contract modification.

(b) Unless otherwise specifically provided for in the contract, all operational practices of the contractor and all workmanship and material, equipment and articles used in the performance of work shall be in accordance with American Bureau of Shipping "Rules for Building and Classing Steel Vessels", U.S. Coast Guard Marine Engineering Regulations and Material Specifications (46 CFR Subchapter F), U.S. Coast Guard Electrical Engineering Regulations (46 CFR Subchapter J), and U.S. Public Health Service "Handbook on Sanitation of Vessel Construction", in effect at the time of the contract award; and the best commercial maritime practices, except where military specifications are specified, in which case such standards of material and workmanship shall be followed.

(c) All material and workmanship shall be subject to inspection and test at all times - during the contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the contractor is found to be defective prior to redelivery of the vessel, or not in accordance with the requirements of the contract, the Government shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the contractor at the contractor's cost and expense. This Government right is in addition to its rights under any Guarantee clause in this contract. If the contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the contractor the excess cost to the Government. The contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the contractor shall be kept complete and available to the Government during the performance of the contract and for a period of two (2) years after delivery of the vessel to the Government.

(d) No welding, including tack welding and brazing, shall be permitted in connection with repairs, completions, alterations, or addition to hulls, machinery or components of vessels unless the welder is, at the time, qualified to the standards established by the U.S. Coast Guard, the American Bureau of Shipping, or the Department of the Navy. The welder's qualifications shall be appropriate for the particular service application, filler material type, position of welding, and welding process involved in the work being undertaken. A welder may be required to re-qualify if the Contracting Officer believes there is a reasonable doubt concerning the welder's ability. Welders' qualifications for this purpose shall be governed by the U.S. Coast Guard Marine Engineering Regulations and Material Specifications (46 CFR Subchapter F). When a welding process other than manual shielded arc is proposed or required, the contractor or fabricator shall submit procedure qualification tests for approval prior to production welding. Procedure qualification tests shall be conducted in accordance with the United States Coast Guard Marine Engineering Regulations and Material Specifications (46 CFR Subchapter F).

(e) The contractor shall exercise reasonable care to protect the vessel from fire, and the contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's fuel oil tanks, magazines or storerooms containing flammable material. A reasonable number of hose lines shall be maintained by the contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the contractor's pier or in dry dock or on a marine railway. All tanks or bilge areas under alteration or repair shall be cleaned, washed, and steamed out or otherwise made safe by the contractor if and to the extent necessary as required by good marine practice or by current Occupational Safety and Health Administration regulations. The Contracting Officer's Representative (COR) shall be furnished with a "gas free" or "safe for hot work" or "safe for workers" certificate before any hot work or entry is done. Unless otherwise provided in this contract, the contractor shall at all times maintain a reasonable fire watch about the vessel, including a fire watch on the vessel while work is being performed thereon.

(f) The contractor shall place proper safeguards and/or effect such safety precautions as necessary, including suitable and sufficient lighting, for the prevention of accidents or injury to persons or property during the prosecution of work under this contract and/or from time of receipt of the vessel until acceptance by the Government of the work performed.

(g) Except as otherwise provided in this contract, when the vessel is in the custody of the contractor or in dry dock or on a marine railway and the temperature becomes as low as 35 degrees Fahrenheit, the contractor shall keep all pipelines, fixtures, traps, tanks, and other receptacles on the vessel drained to avoid damage from freezing, or if this is not practicable, the vessel shall be kept heated to prevent such damage. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means, as approved by the COR.

(h) Whenever practicable, the work shall be performed in a manner which does not interfere with the berthing and messing of personnel attached to the vessel. The contractor shall ensure that assigned personnel have access to the vessel at all times. It is understood that such personnel will not interfere with the work or the contractor's workers.

(i) The Government does not guarantee the correctness of the dimensions, sizes, and shapes shown in any sketches, drawings, plans or specifications prepared or furnished by the Government. Prior to submitting an offer, it is the responsibility of the bidder/

offeror to verify the dimensions, sizes, and shapes in materials provided by the Government. Where practical, the Government will make the vessel available for inspection prior to bid opening or the date for receipt of proposals. If the contractor, as a result of inspection or otherwise, discovers any error in the sketches, drawings, plans or specifications, it shall immediately inform the Contracting Officer of the error and proceed in accord with instructions received from the Contracting Officer. The Government is not liable for any claims or charges resulting from additional work performed by the contractor as a result of a patent ambiguity in the sketches, drawings, plans or specifications that was not brought to the attention of the Contracting Officer. The contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts furnished by the contractor under the contract.

(j) The contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by contractor employees or the work, and at the completion of the work shall remove all rubbish from and about the site of the work and shall leave the work and its immediate vicinity "broom-clean" unless more exactly specified in this contract.

(k) While in drydock or on a marine railway, the contractor shall be responsible for the closing, before the end of working hours, of all valves and openings upon which work is being done by its workers when such closing is practicable. The contractor shall establish a list and keep the COR cognizant of the closure status of all valves and openings upon which the contractor's workers have been working.

(l) Without additional expense to the Government, the contractor shall employ specialty subcontractors where required by the specifications or when necessary for satisfactory performance of the work.

(m)(1) Unless otherwise stated in the contract, the contractor shall notify the COR at least 72 hours in advance:

(i) Prior to starting inspections or tests; and

(ii) When supplies will be ready for Government inspection.

(2) Such notification shall be provided either verbally or in writing at the discretion of the COR.

(End of clause)

1352.271–71 Method of payment and invoicing instructions for ship repair.

As prescribed in 48 CFR 1371.102, insert the following clause:

METHOD OF PAYMENT AND INVOICING INSTRUCTIONS FOR SHIP REPAIR (DATE)

(a) The Government will make payment under this contract based on a percentage of completion. The contractor may invoice for the percentage completed for each work item as work progresses. The amount invoiced shall be calculated based on prices stated in the Schedule, as follows: A work item may not be invoiced until the percentage complete reaches 25 percent. Future invoices for that work item have no limitation as to the percentage of completion required before invoicing, but in no event may invoices be submitted more frequently than every 2 weeks, or for amounts less than $10,000, unless it is the final payment. The minimum percentage of completion (25%) to be reached prior to billing each work item may be waived by the Contracting Officer for large dollar work items on a case-by-case basis.

(b) Invoices submitted by the contractor which are deemed not proper, in accordance with FAR 52.232–25, will be returned. Invoices shall include:

(1) Name and Address of the contractor;

(2) DUNS Number;

(3) Invoice Date;

(4) Contract Number/Modification Number;

(5) CLIN/Work Item Number, to include: Description, Quantity, Unit of Measure, Unit Price and Extended Price;

(6) Shipping and Payment Terms; and,

(7) Contractor Point of Contact, including: Name, Title, Phone Number, and Mailing Address;

(8) The percentage of completion for each CLIN/work item identified;

(9) Name of the Contracting Officer ;

(10) Ship name;

(11) The overall percentage and dollar amount previously billed, currently billed and unbilled.

(c) When invoicing for changed work, the contractor shall identify it as a contract change and shall identify the modification authorizing the change, and the CLIN/Work Item associated with the change.

(d) All items of work invoiced under this contract will be verified and confirmed by the Contracting Officer's Representative as accurate and complete and approved by the designated billing office before payment will be made.

(e) Mail the original invoice to:
[insert]

(f) The contractor's final invoice submitted under the contract must be marked as follows: "THIS INVOICE CONSTITUTES THE FINAL INVOICE—UPON PAYMENT OF THIS INVOICE NO OTHER MONIES ARE DUE UNDER CONTRACT NUMBER _____." (To be assigned at contract award)

(End of clause)

1352.271–72 Additional Item Requirements (AIR)—growth work

As prescribed in 48 CFR 1371.103, insert the following clause:

ADDITIONAL ITEM REQUIREMENTS (AIR)—GROWTH WORK (DATE)

(a) This clause applies to Additional Item Requirements (AIR), also known as growth and emergent work ordered by the Contracting Officer pursuant to the Changes—Ship Repair clause or mutually agreed upon by the parties. The contractor shall perform AIR at the labor billing rates designated in the Schedule, as described in paragraph (c) of this clause. The AIR handling fee designated in the Schedule shall be the sole fee used for direct material purchases and subcontractor handling. The estimated quantity of labor hours and handling fees represent the Government's best estimate for growth that may be required throughout the contract performance period. All growth work shall be paid at the prices stated in the Schedule.

(b) The contractor shall take into account the potential for ordering all estimated AIR quantities in developing the Production Schedule. The ordering of any portion of the AIR quantities does not in itself warrant an extension to the original contract completion date; however, for planning purposes, the Government anticipates ordering AIR in accordance with the following schedule:

(1) No more than 75% of the hours during the first half of the contract period of performance.

(2) No more than 50% of the hours during the third quarter of the contract period of performance.

(3) No more than 30% of the hours during the fourth quarter of the contract period of performance.

(c) The AIR labor rate shall be a flat, hourly rate to cover the entire effort and shall be burdened to include:

(1) Direct production labor hour functions only. Direct production labor hours are hours of skilled labor at the journeyman level expended in direct production. Direct production is defined as work performed by a qualified craftsman that is directly related to the alteration, modification, or repair of the item or system identified as needing alteration, modification, or repair. The following functions are identified as direct production: Abrasive Cleaning/Water Blasting, Tank Cleaning, Welding, Burning, Brazing, Blacksmithing, Machining (inside and outside), Carpentry, Electrical/Electronic Work, Crane Operation, Shipfitting, Lagging/Insulating, Painting, Boilermaking, Pipe Fitting, Engineering (Production), Sheetmetal Work, Staging/Scaffolding, and Rigging.

(2) Non-production labor hours (whether charged directly or indirectly by contractor's accounting system) shall be for labor in support of production functions. For purposes of this clause, support functions are defined as functions that do not directly contribute to the alteration, modification, or repair of the item or system identified as needing alteration, modification, or repair. Necessary support functions should be priced into the burdened rate for production labor hours. Examples of support functions include: Testing, Quality Assurance (inspection), Engineering (support), Planning (including involvement of craft foreman/journeyman in planning a task), Estimating (including determination of necessary materials and equipment needed to perform a task), Material Handling, Set-up (moving tools and equipment from shop to ship to perform a task), Fire Watch, General Labor (including general support of journeyman tasks), Cleaning (including debris pickup and removal), Surveying, Security, Transportation, Supervision, and Lofting (sail/pattern making).

(d) Additional Item Requirements do not include replacement work performed pursuant to the Inspection and Manner of Doing Work or Guarantees clauses.

(e) It is the Government's intention to award any growth work identified during the repair to the contractor, if a fair and reasonable price can be negotiated for such

work, based upon Schedule rates. If a fair and reasonable price cannot be negotiated, the Government may, at its discretion, obtain services outside of the contract. Such services may be performed while the ship is undergoing repair in the contractor's facility pursuant to the Access to Vessels clause.

(f) The contractor shall submit to the Contracting Officer the following information in all AIR proposals:

(1) Number of labor hours estimated; broken down by specific direct production labor category.

(2) Material estimates, individually broken out and priced. When requested by the Contracting Officer, material quotes shall be provided.

(3) Subcontractor estimates, individually broken out and priced along with the actual subcontractor quotes. The requirement to submit subcontractor quotes may be waived if deemed appropriate by the Contracting Officer.

(4) Material/subcontractor handling fee and the basis for the fee.

(g) The contractor shall not be entitled to payment for any hours ordered pursuant to this clause until such time as a written contract modification is executed.

(End of clause)

1352.271–73 Schedule of work.

As prescribed in 48 CFR 1371.104, insert the following clause.

SCHEDULE OF WORK (DATE)

(a) Notwithstanding other requirements specified in this contract, the contractor shall provide to the Contracting Officer and COR the following documents within five (5) working days of the vessel's arrival at the contractor's facility:

(1) Production Schedule.

(2) Work Package Network.

(3) Total Manpower Loading Curve.

(4) Trade Manning Curves.

(5) Subcontracting List.

(b) The Production Schedule shall list the earliest, latest, and scheduled start and completion date for each work item awarded and shall identify the critical path. The Work Package Network shall show the work items, milestones, key events, and activities and shall clearly identify the critical path. The Total Manpower Loading Curve shall show the required manning for the duration of the contract. The Trade Manning Curves shall show the required manning for each trade for the duration of the contract. The Subcontracting List shall show work items, milestones, key events, and activities to be accomplished by subcontractors.

(c) Additional Item Requirements ordered and agreed upon, whether or not yet formalized via a change order (contract modification), shall be added to the Production Schedule, Trade Manning Curves, and Subcontracting List and submitted to the Contracting Officer and COR at each weekly Progress Meeting. Any anticipated or unanticipated deviation (greater than five (5) calendar days) from the Production Schedule shall be immediately brought to the attention of the Contracting Officer and COR.

(d) Any unauthorized deviation in the Production Schedule which results in a delay in the completion of work on a vessel past the established performance period completion date may entitle the Government to remedies for late performance, including, but not limited to, liquidated damages.

(End of clause)

1352.271–74 Foreseeable cost factors pertaining to different shipyard locations.

As prescribed in 48 CFR 1371.105, insert the following provision:

FORESEEABLE COST FACTORS PERTAINING TO DIFFERENT SHIPYARD LOCATIONS (DATE)

(a) The Contracting Officer will evaluate certain foreseeable costs that will vary with the location of the commercial shipyard to be used by bidders/offerors under this solicitation. Costs will be calculated based on the bidder's/offeror's shipyard location and these costs will be added, for the purposes of evaluation only, to the bidder's/offeror's overall price.

(b) These elements of foreseeable costs consist of the following:

(1) *Vessel Transit:* (i) Vessel delivery costs will be based on one round trip from the vessel's homeport of _____ to the contractor's facility at a cruising speed of ____ knots. Distances will be based on the NOAA publication, "Distance Between U.S. Ports".

(ii) Daily vessel operational cost to navigate the vessel between its homeport and the contractor's offered place of performance is $_____ per day. The number of days to transit to the contractor's offered place of performance from the vessel's homeport will be multiplied by the per-day operational cost.

(iii) No operational costs will be applied if the ship can be delivered to the contractor's facility from its homeport within eight (8) hours port-to-port. If the delivery time exceeds eight (8) hours, but is less than 24 hours, it will be considered one full day. Any fraction of subsequent day(s) will be considered as a full day.

(2) *Shore Leave Costs:* If the contractor's facility is outside of a 50-mile radius of the vessel's homeport—

(i) An assessment of $_____ for each 15-day period or portion thereof, beginning with the vessel's departure from the homeport and concluding with the vessel's return to homeport.

(ii) There will be an additional transportation cost for _____ vessel crew members for one (1) round trip(s) between the contractor's offered place of performance and the vessel's homeport at the cost of coach-type airfare.

(3) *Travel and Per Diem Costs:* If the contractor's facility is outside of a 50-mile radius of the vessel's homeport—

(i) There will be a transportation cost for one (1) Contracting Officer's Representative (COR) for ____ round trip(s) between the contractor's offered place of performance and the COR's official duty station at the cost of coach-type airfare.

(ii) There will be a per diem expense for ____ calendar days to support one (1) COR while in the city of the place of contract performance, to be determined in accordance with the Joint Federal Travel Regulations (JFTR). The cost of car rental for the estimated performance period will also be included.

(iii) There will be a transportation cost for one (1) Contracting Officer for ____ round trip(s) between the Contracting Officer's official duty station and the contractor's offered place of performance at the cost of coach-type airfare, plus per diem expenses and a rental car.

(End of clause)

1352.271–75 Delivery and shifting of the vessel.

As prescribed in 48 CFR 1371.106, insert the following clause:

DELIVERY AND SHIFTING OF THE VESSEL (DATE)

(a) The Government shall deliver the vessel to the contractor, at the location specified in the contract.

(b) Whether the specified location of performance is the contractor's own facility or any other authorized facility, it shall be understood to mean the fairway of the facility. The contractor shall provide necessary tugs and pilot services to move the vessel from the fairway to the pier or dock, and, upon completion of all work, from the pier or dock to the fairway of the facility.

(c) While the vessel is in the possession of the contractor, any necessary movement of the vessel incidental to the work specified in the contract shall be furnished by the contractor without additional charge to the Government.

(End of clause)

1352.271–76 Performance.

As prescribed in 48 CFR 1371.107, insert the following clause:

PERFORMANCE (DATE)

(a) The contractor shall not commence work until a notice to proceed has been issued by the Contracting Officer.

(b) The Government shall deliver the vessel described in the contract at such time and location as may be specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at such time and location as may be specified in the contract.

(c) Without additional charge to the Government, and without specific requirement in the contract, the contractor shall:

(1) Make available, at the facility, to personnel of the vessel while in drydock or on a marine railway, sanitary facilities adequate for the number of personnel using them and acceptable to the Contracting Officer;

(2) Supply and maintain, in such condition as the Contracting Officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel;

(3) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the contractor of any of the vessel's machinery,

equipment or fittings, including, but not limited to, winches, pumps, riggings, or pipe lines; and

(4) Furnish suitable offices, office equipment and telephones at or near the site of the work as the Contracting Officer reasonably requires for personnel designated by the Government.

(d) Except as otherwise provided in the contract, the contractor shall furnish all necessary material, labor, supervision, services, equipment, tools, supplies, power, accessories, facilities, and other things and services necessary for accomplishing the work.

(e) The contractor shall conduct dock and sea trials of the vessel as required by the contract. Unless otherwise expressly provided in the contract, during the conduct of these trials the vessel shall be under the control of the vessel's commander and crew with representatives of the contractor and the Government on board to determine whether the work provided by the contractor has been satisfactorily performed. Dock and sea trials not specified which the contractor requires for its own benefit shall not be undertaken by the contractor without prior notice to and approval of the Contracting Officer; any such dock or sea trial shall be conducted at the risk and expense of the contractor. The contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials to enable the representatives of the Government to determine whether the requirements of the contract plans and specifications have been met. The contractor shall also be responsible for the care, installation and removal of any instruments and apparatus furnished by the Government for such trials.

(End of clause)

1352.271–77 Delays.

As prescribed in 48 CFR 1371.108, insert the following clause:

DELAYS (DATE)

When, during the performance of this contract, the contractor is required to delay the work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, fueling, embarking or debarking of passengers or loading or discharging of cargo, and the contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment may be made in the contract. Any such request for equitable adjustment shall be asserted in writing as soon as practicable after the delay or disruption, but not later than the day of final payment under the contract.

(End of clause)

1352.271–78 Minimization of delay due to Government furnished property.

As prescribed in 48 CFR 1371.109, insert the following clause:

MINIMIZATION OF DELAY DUE TO GOVERNMENT FURNISHED PROPERTY (DATE)

(a) In order to assure timely performance under this contract, it is imperative that delay in the contract's performance period resulting from late, damaged, or unsuitable Government furnished property be held to an absolute minimum. In order to achieve minimization of delay, it is agreed that:

(1) Subject to adjustment as provided in paragraph (b) of this clause, the Government shall deliver each item of Government furnished property to the contractor on or before the date specified in the contract or, if later, in sufficient time for the contractor to meet the contract performance period.

(2) The Government may forego furnishing any item of Government property to the contractor. In that event, the contractor shall prepare the vessel in terms of piping, wiring, structure, foundation, ventilation, and any other pre-installation requirements of the item, so that the work on the vessel may continue without delay and disruption resulting from the absence of the item. If the Government does not furnish an item designated as Government furnished property, the contract price may be adjusted accordingly.

(b) The delivery or performance dates for the supplies or services to be furnished by the contractor under this contract are based upon the expectation that Government furnished property suitable for use (except for such property furnished "as is") will be delivered to the contractor at the time stated in the specification or, if not so stated, in sufficient time to enable the contractor to meet such delivery or performance dates. If the Government furnished property is not furnished in the time stated in the contract, or, if a date is not specified, and the late delivery does not give the contractor sufficient time to enable the contractor to meet required contract delivery or performance dates, the contractor shall notify the Government in writing of the late delivery. Notification shall include cost and schedule impacts, including delays and disruptions to schedules. This notification shall be submitted as soon as practical or known.

(c) The provisions in subsection (b) of this clause and in FAR 52.245–1, if applicable, provide the exclusive remedies to the contractor resulting from delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(End of clause)

1352.271–79 Liability and insurance.

As prescribed in 48 CFR 1371.110, insert the following clause:

LIABILITY AND INSURANCE (DATE)

(a) The contractor shall exercise reasonable care and use its best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The contractor shall be responsible for and make good at its own cost and expense any and all loss of or damage of whatsoever nature to the vessel (or part thereof), its equipment, movable stores and cargo, and Government-owned material and equipment for the repair, completion, alteration of or addition to the vessel in the possession of the contractor, whether at the plant or elsewhere, arising or growing out of the performance of the work, except where the contractor can affirmatively show that such loss or damage was due to causes beyond the contractor's control, was proximately caused by the fault or negligence of agents or employees of the Government, or which loss or damage the contractor by exercise of reasonable care was unable to prevent. However, the contractor shall not be responsible for any such loss or damage discovered after redelivery of the vessel unless the loss or damage is discovered within 90 days after redelivery of the vessel and loss or damage is affirmatively shown to be the result of the fault or negligence of the contractor. To induce the contractor to perform the work for the compensation provided, it is specifically agreed that the contractor's aggregate liability on account of loss of or damage to the vessel (or part thereof), its equipment, movable stores and cargo and Government-owned materials and equipment, shall in no event exceed the sum of $1,000,000.00. As to the contractor, the Government assumes the risk of loss or damage to the Government-owned vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment in excess of $1,000,000.00. This assumption of risk includes but is not limited to loss or damage from negligence of whatsoever degree of the contractor's servants, employees, agents or subcontractors, but specifically excludes loss or damage from willful misconduct or lack of good faith on the part of contractor's personnel, who have supervision or direction of all or substantially all of the contractor's business, or all or substantially all of the contractor's operation at any one plant. However, as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the contractor, and the contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action. Nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the contractor, nor shall any person (except the contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a co-defendant in any action against the contractor brought to determine the contractor's liability, or for any other purpose.

(c) The contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, and the vessel against all suits, actions, claims, costs or demands (including without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, or the vessel may be subject or put by reason of damage or injury (including death) to the property or person of

anyone other than the Government, its agencies, instrumentalities and personnel, or the vessel, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the contractor, or any subcontractor, its or their servants, agents or employees; provided that the contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $1,000,000.00 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. Any new equipment warranties that extend beyond the 90 days after redelivery of the vessel shall be assigned to the Government upon redelivery of the vessel. With respect to any such suits, actions, claims, costs or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the contractor shall be as determined by other provisions of this contract and by law; provided that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the contractor's indemnity as provided herein.

(d) The contractor shall, at its own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause. In addition, the contractor shall at its own expense procure and thereafter maintain such ship repairer's legal liability insurance as may be necessary to insure the contractor against its liability as ship repairer in the amount of $1,000,000.00, or the value of the vessel as determined by the Contracting Officer, whichever is the lesser, with respect to each vessel on which work is performed. The contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies, however, at the discretion of the Contracting Officer, such insurance need not be procured whenever the job order requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel. Further, the contractor shall procure and maintain in force Worker's Compensation Insurance (or its equivalent) covering its employees engaged in the work and shall ensure the procurement and maintenance of such insurance by all subcontractors engaged in the work. The contractor shall provide evidence of insurance as required by the Government.

(e) The contractor shall receive no allowance in the contract price for inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage, the risk of which the Government has assumed, written notice of the damage shall be given by the contractor to the Contracting Officer. The notice shall contain full particulars of the loss or damage. If claim is made or suit is brought thereafter against the contractor as the result or because of such event, the contractor shall immediately deliver to the Government every demand, notice, summons or other process received by it or its representatives. The contractor shall cooperate with the Government, and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence; obtaining the attendance of witnesses, and other assistance required in the conduct of suits. The Government shall pay to the contractor the expense, other than the cost of maintaining the contractor's usual organization, incurred in this assistance. Except at its own cost, the contractor shall not voluntarily make any payment, assume any obligation or incur any expense not imperative for the protection of the vessel or vessels at the time of the event.

(End of clause)

1352.271–80 Title.

As prescribed in 48 CFR 1371.111, insert the following clause:

TITLE (DATE)

(a) Title to all materials and equipment acquired, produced for, or allocated to the performance of this contract and incorporated in or placed on the vessel or any part thereof, shall vest in the Government.

(b) The contractor shall assume, without limitation, the risk of loss for any contractor-furnished materials and equipment until final acceptance by the Government of work performed under the contract.

(End of clause)

1352.271–81 Discharge of liens.

As prescribed in 48 CFR 1371.112, insert the following clause:

DISCHARGE OF LIENS (DATE)

The contractor shall immediately discharge or cause to be discharged any lien or right *in rem* of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under the contract. If any such lien or right *in rem* is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the contractor.

(End of clause)

1352.271–82 Department of Labor occupational safety and health standards for ship repair.

As prescribed in 48 CFR 1371.113, insert the following clause:

DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIP REPAIR (DATE)

The contractor, in performance of all work under the contract, shall comply with the requirements of 29 CFR 1910.15. Nothing contained in this contract shall be construed as relieving the contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

1352.271–83 Government review, comment, acceptance and approval.

As prescribed in 48 CFR 1371.114, insert the following clause:

GOVERNMENT REVIEW, COMMENT, ACCEPTANCE AND APPROVAL (DATE)

(a) Documentation, including drawings and other engineering products and reports, required by the contract to be submitted for review, comment, acceptance or approval will be acted upon by the Government within 30 calendar days after receipt by the Government, unless another period of time is specified.

(b) The Government shall respond to Condition Reports, as defined in the Specifications, within five (5) working days, unless the Government notifies the contractor that a longer period of time will be required. If the contractor requests a response in less than five (5) working days, the Government will attempt to accommodate the request, but does not guarantee a response in less than the time limits stated above.

(c) Review, comment, acceptance or approval by the Government as required under this contract and applicable specifications shall not relieve the contractor of its obligation to comply with the specifications and with all other requirements of the contract, nor shall it impose upon the Government any liability it would not have had in the absence of such review, comment and acceptance or approval.

(End of clause)

1352.271–84 Access to the vessel.

As prescribed in 48 CFR 1371.115, insert the following clause:

ACCESS TO THE VESSEL (DATE)

(a) As authorized by the Contracting Officer, a reasonable number of officers, employees and personnel designated by the Government, or representatives of other contractors and their subcontractors shall have admission to the facility and access to the vessel at all reasonable times to perform and fulfill their respective obligations to the Government on a noninterference basis. The contractor shall make reasonable arrangements to provide access for these personnel to office space, work areas, storage or shop areas, and other facilities and services reasonable and necessary to perform their duties. All such personnel shall comply with contractor rules and regulations governing personnel at its shipyard, including those regarding safety and security.

(b) The contractor further agrees to allow a reasonable number of officers, employees, and designated personnel of offerors on other contemplated work, the same privileges of admission to the contractor's facility and access to the vessel(s) on a noninterference basis, subject to contractor rules and regulations governing personnel in its shipyard, including those regarding safety and security.

(End of clause)

1352.271–85 Documentation of requests for equitable adjustment.

As prescribed in 48 CFR 1371.116, insert the following clause:

DOCUMENTATION OF REQUESTS FOR EQUITABLE ADJUSTMENT (DATE)

(a) For the purpose of this clause, the term "change" includes not only a change made pursuant to a written order designated as a "change order," but also any act or omission to act on the part of the Government where a request is made for equitable adjustment.

(b) Whenever the contractor requests or proposes an equitable adjustment to the contract price for a change or an act or omission on the part of the Government, the request shall include a breakdown of the price adjustment in such form and supported by such reasonable detail as the Contracting Officer may request. As a minimum, the contractor shall provide a breakdown of direct labor hours, labor dollars, overhead, material, subcontracts, contingencies and profit for each change and a justification for any extension of the delivery date.

(c) Whenever the contractor requests or proposes an equitable adjustment of $100,000 or greater gross (aggregate increases and/or decreases) for a change made pursuant to a written order designated as a "change order," or whenever the contractor requests an equitable adjustment in any amount for any other act or omission to act on the part of the Government, the proposal supporting such request shall contain the following information for each individual item or element of the request:

(1) A description of the unperformed work required by the contract before the change which has been deleted by the change and the work deleted by the change that already has been completed in whole or in part. The description shall include a list of components, equipment, and other identifiable property involved. Also, the status of manufacture, procurement, or installation of such property shall be indicated. A separate description shall be furnished for design and production work. Items of raw material, purchased parts, components, and other identifiable hardware which are made excess by the change, and which are not to be retained by the contractor, are to be listed for later disposition;

(2) A description of the work necessary to undo work already completed which has been deleted by the change;

(3) A description of the work substituted or added by the change that was not required by the terms of the contract before the change. A list of components and equipment (not bulk material or items) involved should be included. A separate description shall be furnished for design work and production work;

(4) A description of any interference or inefficiency encountered in performing the change;

(5) A description of disruption attributable solely to the change, which shall include the following information:

(i) A specific description of each element of disruption which states how the work has been, or will be, disrupted;

(ii) The calendar time period when disruption occurred, or will occur, illustrated via critical path analysis;

(iii) The area(s) aboard ship where disruption occurred, or will occur;

(iv) The trade(s) disrupted, with a breakdown of man-hours for each trade;

(v) The scheduling of trades before, during, and after the period of disruption;

(vi) A description of measures taken to lessen the disruptive effect of the change.

(6) The delay in delivery attributable solely to the change;

(7) A description of other work attributed to the change;

(8) A narrative statement of the direct causal relationship between any alleged Government act or omission and the claimed result, cross-referenced to the detailed information required above; and

(9) A statement setting forth a comparative enumeration of the amounts "budgeted" for the cost elements, including the materials cost, labor hours, and indirect costs pertinent to the change estimated by the contractor in preparing its proposal(s) for this contract, and the amounts claimed to have been incurred, or projected to be incurred, corresponding to each such "budgeted cost" element.

(10) At the time of agreement upon the price of the equitable adjustment, the contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(d) Pending execution of a bilateral agreement or the direction of the Contracting Officer pursuant to the Changes clause, the contractor shall proceed diligently with contract performance without regard to the effect of any such proposed change.

(End of clause)

1352.271–86 Lay days.

As prescribed in 48 CFR 1371.117, insert the following clause:

LAY DAYS (DATE)

(a) A lay day is defined as an additional day on dry dock or marine railway caused by a Government-issued change. Reimbursement for lay days shall be paid at the rate stated in the Schedule.

(b) No amount for lay day time shall be paid until all contract line items (including optional items) that require drydocking of the vessel have been completed. Lay days for work ordered pursuant to the Additional Item Requirements Clause shall not be compensable unless all dry dock work included in the contract line items is complete.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the contractor shall not be paid as lay day time. Days in which work is performed that are considered normal "non-work" days (weekends or holidays) shall not be paid as lay day time if the ship would have otherwise been in dry dock.

(d) Payment of lay day time shall constitute complete compensation for all costs associated with lay days except for costs directly related to the changed work.

(End of clause)

1352.271–87 Changes—ship repair.

As prescribed in 48 CFR 1371.118, insert the following clause:

CHANGES—SHIP REPAIR (DATE)

(a) The Contracting Officer may, at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract, in any one or more of the following:

(1) Drawings, designs, or specifications, when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications;

(2) Method of shipment or packing;

(3) Place of performance of the work;

(4) Time of commencement or completion of the work; and

(5) Other requirements within the general scope of the contract.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly.

(c) The contractor must submit any proposal for adjustment under this clause within 5 days from the date of receipt of the written order. At the Contracting Officer's discretion, the 5-day period may be shortened. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the contractor's proposal includes the cost of property rendered obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

(End of clause)

1352.271–88 Guarantees.

As prescribed in 48 CFR 1371.119, insert the following clause:

GUARANTEES (DATE)

(a) In the event any work performed or materials furnished by the contractor under this contract prove defective or deficient within ____ days from the date of redelivery of the vessel, the contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) The Government shall be entitled to rely upon any guarantee secured by the contractor or any sub-contractor covering work done or materials furnished which

exceeds the ____day period until its expiration.

(c) With respect to any individual work item identified and listed as incomplete at the redelivery of the vessel, the guarantee period shall run from the date of completion of such item.

(d) If and when practicable, the Government shall afford the contractor an opportunity to effect such corrections and repairs.

(1) If the Contracting Officer determines it is impracticable or is otherwise not advisable to return the vessel to the contractor, or the contractor fails to proceed promptly with any such repairs as directed by the Contracting Officer, the Contracting Officer may direct that the repairs be performed elsewhere, at the contractor's expense.

(2) Where corrections and repairs are to be made by other than the contractor due to nonreturn of the vessel to the contractor, the contractor's liability may be discharged by an equitable deduction in the price of the contract.

(e) The contractor's liability shall only extend for an additional ____ day guarantee period on those defects or deficiencies which it corrected. However, this clause does not limit the responsibility or relieve the liability of the contractor under the Liability and Insurance clause.

(f) At the Contracting Officer's option, defects and deficiencies may be left in their uncorrected condition. In that event, the contractor and the Contracting Officer shall agree on an equitable deduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(g) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract. If a defect or deficiency that exists at the time of redelivery of the vessel was not discovered by a reasonable inspection and is discovered after the expiration of the time frame stated in this clause, it is not subject to the time limitations stated in this clause.

(End of clause)

1352.271–89 Temporary services.

As prescribed in 48 CFR 1371.120, insert the following clause:

TEMPORARY SERVICES (DATE)

(a) Temporary services are services incidental to the performance of work which are required in the schedule or specifications to be provided by the contractor. Temporary services may include the furnishing of water, electricity, telephone service, toilet facilities, garbage removal, office space, parking places or similar facilities.

(b) If performance time is extended due to Government-caused delay, the contractor may request an equitable adjustment for providing temporary services at the rate stated in the Schedule.

(End of clause)

1352.271–90 Insurance requirements.

As prescribed in 48 CFR 1371.121, insert the following clause:

INSURANCE REQUIREMENTS (DATE)

(a) The contractor shall procure and thereafter maintain the following insurance:

(1) Ship contractor's legal liability insurance to insure the risks described in paragraph (b) of clause 1352.271–79. This insurance shall be for $1,000,000.00.

(2) Comprehensive general liability insurance and automobile insurance to insure the risks described in paragraph (c) of clause 1352.271–79. This insurance shall be for $1,000,000.00 on account of any one accident or occurrence with respect to each vessel, boat, and/or barge upon which work is performed. The contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies.

(3) Full coverage in accordance with the State Worker's Compensation law; and

(4) Full coverage in accordance with the United States Longshoremen's and Harbor Worker's Act.

(b) As evidence that it has obtained the insurance specified in paragraph (a) of this clause, the contractor shall furnish the Contracting Officer with a certificate or certificates executed by an agent of the insurer authorized to execute such certificates. Such certificates shall be furnished prior to commencement of the work. Each certificate shall state that (name of insurer) has insured (name of contractor) awarded contract number _____ for repair/alteration of (name of vessel) in accordance with the Liability and Insurance clause and the Insurance Requirements clause contained herein. Each certificate shall set forth that each policy of insurance represented thereby will expire on (date) and that each such policy contains the following clause:

"It is agreed that in the event of cancellation or any material change in the policy adversely affecting the interest of the Government in this insurance, 30 days prior written notice will be given to the Contracting Officer."

(End of clause)

Subpart 1352.3—Provisions and Clauses Matrix

1352.301 Solicitation provisions and contract clauses (Matrix).

BILLING CODE 3510–03–P

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.201-70 Contracting Officer's Authority	1301.602-170	C	Y	G	R	R											
1352.201-71 Ratification Release	1301.602-3	C	N	H		A											
1352.201-72 Contracting Officer's Representative (COR)	1301.670-70	C	N	G	A	A											
1352.208-70 Restrictions on Printing and Dupiicating	1308.802-70	C	Y	H	A	A											
1352.209-70 Potential Organizational Conflict of Interest	1309.507-1(a)	P	N	L	A												
Alternate I	1309.507-1(b)	P	N	L	A												
1352.209-71 Limitation of Future Contracting	1309.507-2(a)(1)	C	Y	H	A	A											
Alternate I	1309.507-2(a)(2)	C	Y	H	A	A											
Alternate II	1309.507-2(a)(3)	C	Y	H	A	A											

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
Alternate III	1309.507-2(a)(4)	C	Y	H	A	A											
Alternate IV	1309.507-2(a)(5)	C	Y	H	A	A											
Alternate V	1309.507-2(a)(6)	C	Y	H	A	A											
Alternate VI	1309.507-2(a)(7)	C	Y	H	A	A											
1352.209-72 Restrictions against Disclosure	1309.507-2(b)	C	Y	H						A							
1352.209-73 Compliance with the Laws	1309.507-2(c)	C	Y	H	R	R											
1352.209-74 Organizational Conflict of Interest	1309.507-2(d)	C	Y	H	R	R											
1352.209-75 Title 13 and Non-Disclosure Requirements	1309.507-2(e)	C	Y	H						A							
1352.213-70 Evaluation Utilizing Simplified Acquisition Procedures	1313.106-2-70	P	N	M								R					
1352.213-71 Instructions for Submitting Quotations Under the Simplified Acquisition Threshold - Non-Commercial	1313.302-1-70	P	N	L								A					

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.215-70 Proposal Preparation	1315.204-570(a)(1)	P	N	L	R												
1352.215-71 Instructions for Oral Presentations	1315.204-570(a)(2)	P	N	L	A												
1352.215-72 Inquiries	1315.204-570(a)(3)	P	N	L	O												
1352.215-73 Evaluation Quantities-Indefinite Quantity Contract	1315.204-570(b)(1)	P	Y	M	A				A								
1352.215-74 Best Value Evaluation	1315.204-570(b)(2)	P	N	M	A												
1352.215-75 Evaluation Criteria	1315.204-570(b)(2) 1315.204-570(b)(3)	P	N	M	A												
1352.215-76 Cost or Pricing Data	1315.204-570(b)(4)	P	Y	L	A												
1352.216-70 Estimated and Allowable Costs	1316.307 (a)	C	N	B										R			
1352.216-71 Level of Effort (Cost-Plus-Fixed-Fee, Term Contract)	1316.307 (b)	C	N	B										A			
1352.216-72 Determination of Award Fee	1316.405.2	C	N	B										A			

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.216-73 Distribution of Award Fee	1316.406	C	N	B										A			
1352.216-74 Task Orders	1316.501-2-70	C	Y	H				A									
1352.216-75 Minimum and Maximum Contract Amounts	1316.506(a)	C	N	B					R								
1352.216-76 Placement of Orders	1316.506(b)	C	N	G				R									
1352.216-77 Ceiling Price	1316.601-70 1316.602-70	C	N	B			R										
1352.219-70 Section 8(a) Direct Award	1319.811-3(a)	C	N	H	A	A											
1352.219-71 Notification to Delay Performance	1319.811-3(b)	C	Y	H	A	A											
1352.219-72 Notification of Competition Limited to Eligible 8(a) Concerns - Alternate III	1319.811-3(c)	C	N	H	A	A											
1352.227-70 Rights in Data, Assignment of Copyright	1327.404-4(a)	C	Y	H	A	A											
1352.228-70 Insurance Coverage	1328.310-70(a)	C	N	H	A	A											

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.228-71 Deductibles Under Required Insurance Coverage - Cost Reimbursement	1328.310-70(c)	C	Y	H										A			
1352.228-72 Deductibles Under Required Insurance Coverage - Fixed Price	1328.310-70(d)	C	Y	H									A				
1352.228-73 Loss of or Damage to Leased Aircraft	1328.310-70(e) 1328.310-70(f)	C	Y	H											A		
1352.228-74 Fair Market Value of Aircraft	1328.310-70(e) 1328.310-70(g)	C	N	H											A		
1352.228-75 Risk and Indemnities	1328.310-70(e) 1328.310-70(h)	C	Y	H											A		
1352.228-76 Approval of Group Insurance Plans	1328.310-70(i)	C	Y	H										R			
1352.231-70 Precontract Costs	1331.205-32	C	N	H										A			
1352.231-71 Duplication of Effort	1331.205-70	C	Y	H			A							A			
1352.233-70 Agency Protests	1333.103(a)	P	N	L	A												

Provision or Clause	Prescribed in	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.233-71 GAO and Court of Federal Claims Protests	1333.104-70(a)	P	Y	L	A												
1352.235-70 Protection of Human Subjects	1335.006(a)	P	Y	L	A												
1352.235-71 Protection of Human Subjects - Exemption	1335.006(b)	C	N	H		A											
1352.235-72 Protection of Human Subjects - Institutional Approval	1335.006(c)	C	N	H		A											
1352.235-73 Research Involving Human Subjects - After Initial Contract Award	1335.006(d)	C	Y	H		A											
1352.237-70 Security Processing Requirements - High or Moderate Risk Contracts	1337.110-70(b)	C	Y	H						A							
1352.237-71 Security Processing Requirements - Low Risk Contracts	1337.110-70(c)	C	Y	H						A							
1352.237-72 Security Processing Requirements - National Security Contracts	1337.110-70(d)	C	Y	H						A							

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.237-73 Foreign National Visitor and Guest Access to Departmental Resources	1337.110-70(e)	C	Y	H						A							
1352.237-74 Progress Reports	1337.110-71(a)	C	N	G	A	A											
1352.237-75 Key Personnel	1337.110-71(b)	C	Y	H						A							
1352.239-70 Software License Addendum	1339.107	C	Y	H													A
1352.239-71 Electronic and Information Technology	1339.270(a)	P	Y	L	A												A
1352.239-72 Security Requirements for Information Technology Resources	1339.270(b)	C	Y	H						A							R
1352.242-70 Postaward Conference	1342.503-70	P	Y	L	A	A											
1352.245-70 Government Furnished Property	1345.107-70	C	N	G	A	A											
1352.246-70 Place of Acceptance	1346.503	C	Y	E	R	R											

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.270-70 Period of Performance	1370.101	C	N	F	A	A											
1352.270-71 Pre-Bid / Pre-Proposal Conference and Site Visit	1370.102	P	N	L	A												
1352.271-70 Inspection and Manner of Doing Work	1371.101	C	Y	H												R	
1352.271-71 Method of Payment and Invoicing Instructions for Ship Repair	1371.102	C	N	H												R	
1352.271-72 Additional Item Requirements (AIR) - Growth Work	1371.103	C	Y	H												R	
1352.271-73 Schedule of Work	1371.104	C	Y	H												R	
1352.271 -74 Foreseeable Cost Factors Pertaining to Different Shipyard Locations	1371.105	P	N	H												R	
1352.271-75 Delivery and Shifting of the Vessel	1371.106	C	Y	H												A	
1352.271-76 Performance	1371.107	C	Y	H												R	

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.271-77 Delays	1371.108	C	Y	H												R	
1352.271-78 Minimization of Delay Due to Government Furnished Property	1371.109	C	Y	H												R	
1352.271-79 Liability and Insurance	1371.110	C	Y	H												R	
1352.271-80 Title	1371.111	C	Y	H												R	
1352.271-81 Discharge of Liens	1371.112	C	Y	H												R	
1352.271-82 Department of Labor Occupational Safety and Health Standards for Ship Repair	1371.113	P	Y	H												A	
1352.271-83 Government Review, Comment, Acceptance and Approval	1371.114	C	Y	H												R	
1352.271-84 Access to the Vessel	1371.115	C	Y	H												R	
1352.271-85 Documentation of Requests for Equitable Adjustment	1371.116	C	Y	H												R	

Provision or Clause	Prescribed In	P or C	IBR	UCF	ALL SOL	ALL CON	T&M LH	IND DEL	IND QTY	SVC	SUP	SAP	FP	CR	LA	SR	IT
1352.271-86 Lay Days	1371.117	C	Y	H												R	
1352.271-87 Changes - Ship Repair	1371.118	C	Y	H												R	
1352.271-88 Guarantees	1371.119	C	N	H												R	
1352.271-89 Temporary Services	1371.120	C	Y	H												R	
1352.271-90 Insurance Requirements	1371.121	C	N	H												R	

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PART 1353—FORMS

Subpart 1353.1—General

Sec.
1353.100 Scope of subpart.
1353.107 Obtaining forms.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.
1353.206 Competition requirements.

Subpart 1353.3—Illustration of Forms

353.300 Scope of subpart.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1353.1—General

1353.100 Scope of subpart.

This subpart prescribes DOC forms that are supplemental to those provided in FAR Part 53.

1353.107 Obtaining forms.

The DOC forms may be obtained from any DOC contracting office.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.

This subpart prescribes or references DOC forms for use in acquisitions. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the CAR in which the form usage requirements are addressed.

1353.206 Competition requirements.

As prescribed in 48 CFR 1306.303–70, use Form CD–492, *Justification for Other Than Full and Open Competition,* to support the requirements under FAR Subpart 6.3 *(see Appendix A: Forms).*

1353.219 Small business programs.

Use Form CD–570, *Small Business Set-Aside Review,* to fulfill and document the requirements under FAR 19.5 *(see Appendix A: Forms).*

Subpart 1353.3—Illustration of Forms

1353.300 Scope of subpart.

DOC Forms will not be illustrated in this CAR. Persons wishing to obtain copies of DOC forms prescribed in the CAR may do so in accordance with 1353.107.

SUBCHAPTER I—DEPARTMENT SUPPLEMENTAL REGULATIONS

PART 1370—UNIVERSAL SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1370.1—Provisions and Clauses

Sec.
1370.101 Period of performance.
1370.102 Pre-bid/pre-proposal conference and site visit.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1370.1—Provisions and Clauses

1370.101 Period of performance.

Insert the clause 1352.270–70, *Period of Performance,* in all solicitations and contracts where a period of performance will be specified.

1370.102 Pre-bid/pre-proposal conference and site visit.

Insert provision 1352.270–71, *Pre-Bid/Pre-Proposal Conference and Site Visit,* in solicitations where a pre-proposal conference will be held. The provision is optional for construction and may be modified as necessary. The contracting officer shall include or delete the paragraph regarding site visits.

PART 1371—ACQUISITIONS INVOLVING SHIP CONSTRUCTION AND SHIP REPAIR

Subpart 1371.1—Provisions and Clauses

Sec.
1371.101 Inspection and manner of doing work.
1371.102 Method of payment and invoicing instructions for ship repair.
1371.103 Additional item requirements (AIR)—growth work.
1371.104 Schedule of work.
1371.105 Foreseeable cost factors pertaining to different shipyard locations.
1371.106 Delivery and shifting of the vessel.
1371.107 Performance.
1371.108 Delays.
1371.109 Minimization of delay due to government furnished property.
1371.110 Liability and insurance.
1371.111 Title.
1371.112 Discharge of liens.
1371.113 Department of Labor occupational safety and health standards for ship repair.
1371.114 Government review, comment, acceptance, and approval.
1371.115 Access to the vessel.
1371.116 Documentation of requests for equitable adjustment.
1371.117 Lay days.
1371.118 Changes—ship repair.
1371.119 Guarantees.
1371.120 Temporary services.
1371.121 Insurance requirements.

Authority: 41 U.S.C. 414; 48 CFR 1.301–1.304.

Subpart 1371.1—Provisions and Clauses

1371.101 Inspection and manner of doing work.

Insert clause 1352.271–70, *Inspection and Manner of Doing Work,* in all solicitations and contracts for ship construction and ship repair.

1371.102 Method of payment and invoicing instructions for ship repair.

Insert clause 1352.271–71, *Method of Payment and Invoicing Instructions for Ship Repair,* in all solicitations and contracts for ship repair.

1371.103 Additional item requirements (AIR)—growth work.

Insert clause 1352.271–72, *Additional Item Requirements (AIR)—Growth Work,* in all solicitations and contracts for ship repair.

1371.104 Schedule of work.

Insert clause 1352.271–73, *Schedule of Work,* in all solicitations and contracts for ship repair.

1371.105 Foreseeable cost factors pertaining to different shipyard locations.

Insert provision 1352.271–74, *Foreseeable Cost Factors Pertaining to Different Shipyard Locations,* in all solicitations for ship repair.

1371.106 Delivery and shifting of the vessel.

Insert clause 1352.271–75, *Delivery and Shifting of the Vessel,* in all solicitations and contracts for ship repair to be performed at the contractor's facility.

1371.107 Performance.

Insert clause 1352.271–76, *Performance,* in all solicitations and contracts for ship construction and ship repair.

1371.108 Delays.

Insert clause 1352.271–77, *Delays,* in all solicitations and contracts for ship repair.

1371.109 Minimization of delay due to Government furnished property.

Insert clause 1352.271–78, *Minimization of Delay Due to Government Furnished Property,* in all solicitations and contracts for ship construction and ship repair.

1371.110 Liability and insurance.

Insert clause 1352.271–79, *Liability and Insurance,* in all solicitations and contracts for ship repair.

1371.111 Title.

Insert clause 1352.271–80, *Title,* in all solicitations and contracts for ship repair.

1371.112 Discharge of liens.

Insert clause 1352.271–81, *Discharge of Liens,* in all solicitations and contracts for ship construction and ship repair.

1371.113 Department of Labor occupational safety and health standards for ship repair.

Insert clause 1352.271–82, *Department of Labor Occupational Safety and Health Standards for Ship Repair,* in all solicitations and contracts for ship repair.

1371.114 Government review, comment, acceptance, and approval.

Insert clause 1352.271–83, *Government Review, Comment, Acceptance and Approval,* in all solicitations and contracts for ship construction and ship repair.

1371.115 Access to the vessel.

Insert clause 1352.271–84, *Access to the Vessel,* in all solicitations and contracts for ship construction and ship repair.

1371.116 Documentation of requests for equitable adjustment.

Insert clause 1352.271–85, *Documentation of Requests for Equitable Adjustment,* in all solicitations and contracts for ship construction and ship repair.

1371.117 Lay days.

Insert clause 1352.271–86, *Lay Days,* in all solicitations and contracts for ship repair.

1371.118 Changes—ship repair.

Insert clause 1352.271–87, *Changes—Ship Repair,* in all solicitations and contracts for ship repair.

1371.119 Guarantees.

Insert clause 1352.271–88, *Guarantees,* in all solicitations and contracts for ship construction and ship repair.

1371.120 Temporary services.

Insert clause 1352.271–89, *Temporary Services,* in all solicitations and contracts for ship repair.

1371.121 Insurance requirements.

Insert clause 1352.271–90, *Insurance Requirements,* in all solicitations and contracts for ship construction and ship repair.

[FR Doc. 2010–4132 Filed 3–5–10; 8:45 am]

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Federal Register

Monday,
March 8, 2010

Part III

Department of Labor

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0038]

Federal Advisory Council on Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Reopening of the record and extension of the nominations deadline.

SUMMARY: OSHA is reopening the record and extending the deadline for submitting nominations for membership on the Federal Advisory Council on Occupational Safety and Health (FACOSH) until March 31, 2010.

DATES: Nominations for FACOSH must be submitted (postmarked, sent, transmitted, received) by March 31, 2010.

ADDRESSES: You may submit nominations for FACOSH, identified by Docket No. OSHA–2009–0038, by any one of the following methods:

Electronically: Nominations, including attachments, may be submitted electronically at *http://www.regulations.gov*, the Federal eRulemaking Portal. Follow the online instructions for submitting nominations;

Facsimile: If the nomination, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648;

Mail, express delivery, hand delivery, messenger or courier service: Submit three copies of nominations to the OSHA Docket Office, Docket No. OSHA–2009–0038, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All nominations for FACOSH must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2009–0038). Because of security-related procedures, submitting nominations by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures for submitting nominations by hand delivery, express delivery, and messenger or courier service. For additional information on submitting nominations, *see* 74 FR 66151.

Submissions in response to this **Federal Register** notice, including personal information provided, will be posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birth dates.

Electronic copies of this **Federal Register** notice as well as OSHA's December 14, 2009 notice requesting nominations for FACOSH membership are available at *http://www.regulations.gov*. Both notices, as well as news releases and other relevant information, are also available on OSHA's webpage at *http://www.osha.gov*.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Ms. Jennifer Ashley, OSHA, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

For general information: Mr. Francis Yebesi, OSHA, Office of Federal Agency Programs, U.S. Department of Labor, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2122; e-mail *ofap@dol.gov*.

SUPPLEMENTARY INFORMATION:

OSHA is reopening the record and extending the deadline for submitting nominations for membership on FACOSH until March 31, 2010. OSHA is extending the FACOSH nominations deadline because of weather-related Federal government closures during the week preceding the deadline. For instructions and information about submitting nominations, see 74 FR 66151.

On December 14, 2009, OSHA published a **Federal Register** notice inviting interested parties to submit nominations for FACOSH membership by February 12, 2010 (74 FR 66151). OSHA requested nominations to fill 10 vacancies on FACOSH, five labor and five management members. Five vacancies occurred during CY 2009 and five vacancies will occur in CY 2010. The Secretary of Labor will appoint new members to two-year or three-year terms depending on whether the member will be filling a CY 2009 or CY 2010 vacancy.

FACOSH is authorized to advise the Secretary of Labor on all matters relating to the occupational safety and health of Federal employees (Occupational Safety and Health Act of 1970 (29 U.S.C. 688), 5 U.S.C. 7902, Executive Order 13446). This includes providing advice on how to reduce and keep at a minimum the number of injuries and illnesses in the Federal workforce and how to encourage the establishment and maintenance of effective occupational safety and health programs in each Federal department and agency.

Authority and Signature: David Michaels, PhD MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. App), Executive Order 13511, 29 CFR part 1960 (Basic Program Elements of for Federal Employee Occupational Safety and Health Programs), 41 CFR part 102–3, and Secretary of Labor's Order 5–2007 (72 FR 31160).

Signed at Washington, DC, this March 2, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–4842 Filed 3–5–10; 8:45 am]

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Federal Register

Vol. 75, No. 44

Monday, March 8, 2010

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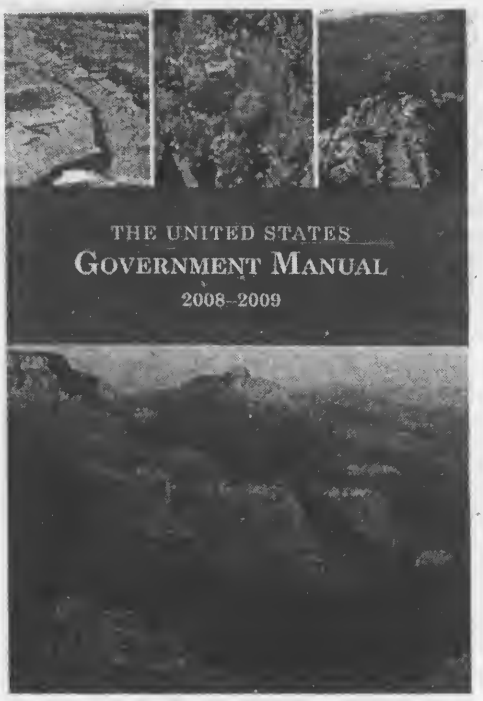

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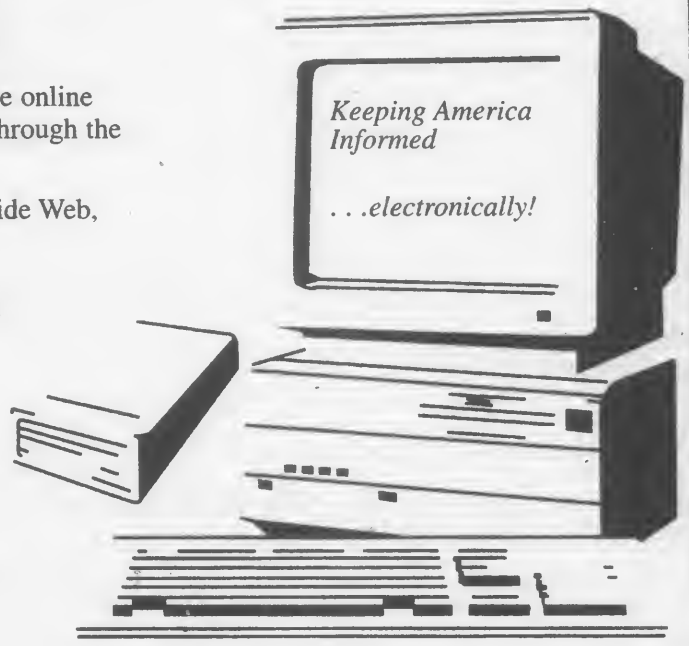

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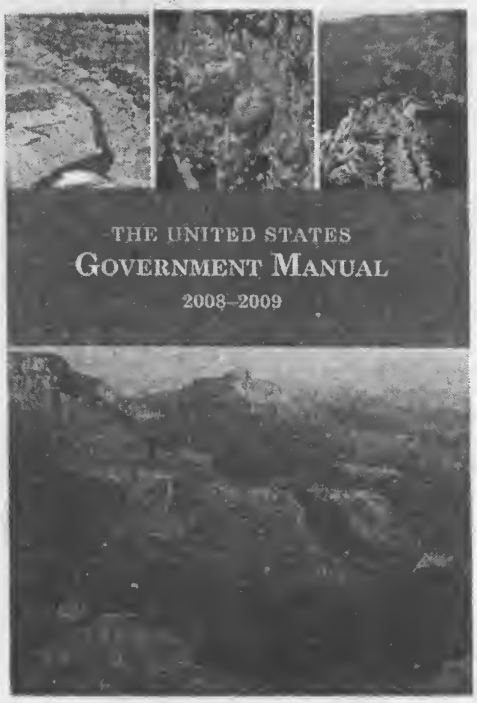

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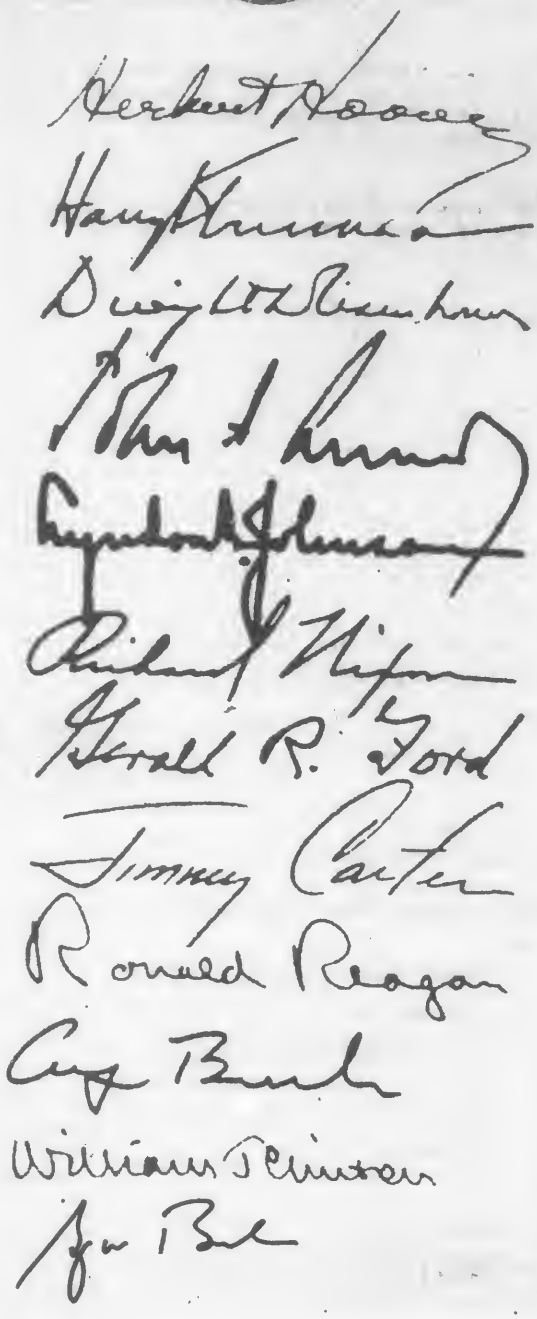

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